

**NATIONS UNIES
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**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**PROCEDURES SPECIALES ASSUMÉES PAR
LE CONSEIL DES DROITS DE L'HOMME**

**SPECIAL PROCEDURES ASSUMED BY THE
HUMAN RIGHTS COUNCIL**

Mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and association

IN THE CASE OF

**CONSTITUTIONALITY CHALLENGE
96/2014 Y 97/2014**

**MOBILITY LAW OF THE FEDERAL DISTRICT
- MEXICO CITY MOBILITY LAW -**

ART 212

ART 213

ART 214

**BEFORE THE
SUPREME COURT OF THE NATION OF MEXICO**

**BRIEF OF AMICUS CURIAE
BY MAINA KIAI, UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHTS
TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION**

I. Statement of Identity and Interest of Amicus Curiae

1. Maina Kiai is the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association.
2. Special Rapporteurs are part of the special procedures mechanisms of the Human Rights Council, made up of independent human rights experts with the mandate to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social. As at October 1, 2014, there were 39 thematic and 14 country mandates.
3. The mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association was established by Human Rights Council resolution 15/21 in October 2010. The mandate was renewed for an additional three years by Human Rights Council resolution 24/5 adopted in September 2013. Maina Kiai took up his duties as the first Special Rapporteur on the rights to freedom of peaceful assembly and of association on May 1, 2011.
4. The Special Rapporteur examines, monitors, advises and publicly reports on the freedoms of assembly and association worldwide. He does this by receiving individual complaints, conducting country visits, issuing thematic reports, providing technical assistance to governments, and engaging in public outreach and promotional activities – all with the ultimate goal of promoting and protecting the rights to freedom of peaceful assembly and of association worldwide.
5. This brief is submitted to the Supreme Court of Mexico in Mexico City, by Maina Kiai in his capacity as Special Rapporteur on the rights to freedom of peaceful assembly and association pursuant to Human Rights Council Resolutions 15/21 and 24/5. This submission is provided by him on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.
6. Authorization for the positions and views expressed by Maina Kiai, in full accordance with his independence, was neither sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.
7. The Special Rapporteur, in the fulfillment of his mandate, submits this brief in line with the practice of the Supreme Court of Mexico to receive Amicus Curiae. In this way he wishes to contribute to the understanding of the right to freedom of peaceful assembly in the context of the constitutionality challenge of articles 212, 213, 214 of the Mobility Law

of the Federal District in Mexico, hereinafter 'the Mobility Law'¹, currently presented before this court.

II. Summary of facts and argument

8. On 14th of July 2014, the Mobility Law of the Federal District in Mexico was gazetted. The law regulates a wide range of aspects organizing the mobility of people, transport, its quality and security. Articles 212, 213 and 214 regard manifestations, defined by the law (article 7) as a concentration of human beings, generally in the open air, including marches and sit-ins. These articles cover generally speaking, peaceful assemblies as defined under international law.
9. First, article 212 stipulates that the government has to offer the necessary facilities for public manifestations for which notice is given. In addition, it determines that written notice, indicating the 'perfectly legitimate objective' of the assembly, has to be given 48 hours ahead of assemblies which risk to disturb transit in roads, peace or tranquility of the city population².
10. Second, article 213 provides that all sorts of manifestations, including caravans and parades, can use the roads, except primary roads with continuous circulation. The latter can only be used momentarily, such as to cross a road or when it is the sole way of accessing the target destination³.
11. Finally, article 214, determines that the security authorities can take all measures necessary to avoid a blockage of the primary roads with continuous circulation. The article makes reference to further guidelines for implementation⁴.

¹ Ley de Movilidad del Distrito Federal, Mexico, Gaceta Oficial del Distrito Federal, 14th of July 2014. Also referred to as the Mexico City Mobility Law.

² Art 212 of the Mobility Law: "*[The Secretariat of] Public Security [of the Federal District] shall be obliged to offer the necessary facilities for those public manifestations involving either groups or individuals who give prior notice.*

For the holding of parades, processions, marches, caravans, demonstrations, pilgrimages, or any human gathering of either political, religious, sporting, recreational or social nature, with a perfectly legitimate objective, and which may disturb either road traffic, or the peace and tranquility of the population of the city, it shall be necessary to provide prior written notice to [The Secretariat of] Public Security [of the Federal District] at least 48 hours in advance.

The competent branch of government shall inform the public, using mass communication and electronic media, of the holding of such demonstrations, the performance of such actions, or the occurrence of such circumstances which might disturb the use of roads, either momentarily, temporarily, or permanently. It must also suggest alternatives for the transit of people and/or vehicles."

³ Art 213 of the Mobility Law: '*Parades, processions, marches, caravans, pilgrimages, and any human gathering of either political, religious, sporting, recreational, or social nature taking place in the city may use roads, except for primary roads with continuous circulation, unless when crossing from one road to another, or connecting with another road; or when the primary road in question be the sole access the concentration point, provided such crossing or connection is momentary.*'

⁴ Art 214 of the Mobility Law: '*[The Secretariat of] Public Security [of the Federal District] shall take the necessary measures to prevent blockages of continuous-traffic primary roads, pursuant to the appropriate provisions. Guidelines regarding this chapter will be set under the appropriate Regulations.'*

12. These three provisions impact upon the right to hold peaceful assemblies. This amicus curiae identifies two questions for clarification under international law, standards and principles. **First**, is demanding prior notice for peaceful assemblies legitimate, and if so, do the modalities as defined in art 212 of the Mobility law conform international law, principles and standards? **Second**, can an area, described as 'primary roads of continuous circulation' be generally defined as a no-go zone for assemblies, including blockages, and what are the legitimate means to enforce it?
13. The right to freedom of assembly is protected by the International Covenant on Civil and Political Rights (ICCPR), which Mexico is party to. Restrictions to the right are only permissible when they are: (1) in conformity with the law; (2) for a legitimate aim and (3) necessary in a democratic society, for which they must be proportionate⁵. This amicus curiae, analyses the two questions defined above and argues that the provisions of the Mobility Law (art 212, 213 and 214) do not conform with international human rights law, standards and principles. Most importantly the principle of proportionality is not observed.

III. Framework of international human rights law in Mexico

14. The State of Mexico is a full member of the United Nations and the Organization of American States. Article 21 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to freedom of Assembly, as well as Article 15 of the American Convention of Human Rights (ACHR)⁶.

Article 21 ICCPR:

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 (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

15. The international obligations of States are twofold. On the one hand, States have a positive obligation to create an enabling environment in which the right to freedom of peaceful assembly can be exercised; hence they have the obligation to facilitate and protect peaceful assemblies⁷.
16. On the other hand, States have the negative obligation to refrain from interference with the rights guaranteed. The U.N. Human Rights Committee⁸ – the body charged with

⁵ See as detailed below, art 22 (2) ICCPR.

⁶ Art 15 of the ACHR: '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 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 freedom of others.' The right to freedom of peaceful assembly is also enshrined in article 20 of the Universal Declaration of Human Rights; article 8 of the International Covenant on Economic, Social and Cultural Rights.

⁷ United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association*, at para. 27, U.N. Doc. A/HRC/20/27 (May 21, 2012).

⁸ Hereinafter referred to as Human Rights Committee.

authoritative interpretation and monitoring of implementation of the ICCPR – in its general comment No. 27 on the freedom of movement underscored:

In adopting laws providing for restrictions ... States should always be guided by the principle that the restrictions must not impair the essence of the right ... the relation between right and restriction, between norm and exception, must not be reversed.⁹

17. The Human Rights Committee further recalls that the right of peaceful assembly is a fundamental human right that is essential for public expression of one's views and opinions and indispensable in a democratic society¹⁰. The restriction to this right is only permissible when it is: (1) in conformity with the law; (2) for a legitimate aim as mentioned in article 21 of the ICCPR and (3) necessary in a democratic society. Any restriction must comply with the strict test of necessity and proportionality¹¹.
18. **First**, any restriction must be "in conformity with the law". Any law regulating the right to freedom of assembly must prevent arbitrary interferences with the right and meet the requirements of legality¹². The Human Rights Committee in its General Comment No. 34 clarifies that to meet the principle of legality, a law may not confer unfettered discretion and it must provide sufficient guidance to those charged with its execution to enable right holders to ascertain what sort of behavior is restricted and what is not¹³.
19. **Second**, only the aims mentioned in article 21 of the ICCPR are considered legitimate: 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. It falls within the duty of the State to specify the aim, which is sought to be protected, as well as to indicate the specific threat¹⁴.
20. **Third**, necessary in a democratic society means that any restriction has to pass the necessity and proportionality test. It can only be applied for those purposes identified and must be directly related to the specific needs on which they are predicated¹⁵. In its

⁹ U.N. Human Rights Committee, *General Comment No. 27*, 1999, at para. 13.

¹⁰ Human Rights Committee, *Turchenyak et al. v. Belarus*, Communication No. 1948/2010, para. 7.4., (July 24, 2013); Reiterated in Human Rights Committee, *Sergey Praded v. Belarus*, Communication NO. 2029/2011, para. 7.4., CCPR/C/112/D/2029/2011, (October 10, 2014).

¹¹ Human Rights Committee, *Sergey Praded v. Belarus*, Communication NO. 2029/2011, para. 7.5., CCPR/C/112/D/2029/2011, (October 10, 2014), with reference to Human Rights Committee, *General Comment No. 34*, para. 22.

¹² On the need for legality see Manfred Nowak, *CCPR Commentary*, N.P. Engel, 2005, p. 489-490.

¹³ U.N. Human Rights Committee, *General Comment No. 34*, para. 25.

¹⁴ The Human Rights Committee has found that when a State invokes national security and protection of public order as a reason to restrict the right to association, the State party must prove the precise nature of the threat. U.N. Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, Communication No. 1119/2002, U.N. Doc. CCPR/C/84/D/1119/2002 at para. 7.3 (2005); See also Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, (December 31 2011) [Hereinafter IACHR Report] at para. 166. The European Court on Human Rights clarified, in a case on the freedom of association that restrictions based on national security concerns must refer to the specific risks posed by the association; it is not enough for the State to generally refer to the security situation in the specific area. See ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey*, App. No. 23885/94, (1999), para. 44; See also ECtHR, *Parti Nationaliste Basque-Organisation Regionale D'Iparralde v. France*, App. No. 71251/01, Eur. Ct. H.R. (2007), para. 47.

¹⁵ Human Rights Committee, *Sergey Praded v. Belarus*, Communication NO. 2029/2011, para. 7.8., CCPR/C/112/D/2029/2011, (October 10, 2014).

General Comment No. 31 on the nature of the general legal obligations imposed on States, the Human Rights Committee indicates that 'where [...] restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims.'¹⁶

21. Next to international human rights law referring to legally binding obligations, the *amicus curiae* makes reference to standards and principles that emanate from legal and institutional frameworks, coming from international treaty bodies, international, regional courts (jurisprudence) or form part of an existing or emerging practice. These include the findings of UN treaty bodies or of experts under the special procedures, the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights whose jurisprudence is legally binding. Further, given that the ICCPR and the European Convention on Human Rights¹⁷ use similar wording for the right to freedom of peaceful assembly, and given the elaborate track record of the European Court on Human Rights (ECtHR) in providing interpretative guidance to human rights stipulations, the decisions of this Court are relevant and shall be referred to in the discussion below. Similarly the OSCE Guidelines shall be mentioned. The OSCE elaborated guidelines¹⁸, which offer a practical toolkit for legislators and practitioners responsible for implementing laws by drawing on good-practice examples from national legislations in European and OSCE participating States and the case law of the European Court of Human Rights to illustrate the various legislative options used to regulate issues pertaining to the freedom of assembly.

IV. Prior notice to hold assemblies and its modalities

22. Article 212 of the Mobility Law stipulates that the government has to offer the necessary facilities for public manifestations for which notice is given. In addition, it determines that written notice, indicating the 'perfectly legitimate objective' of the assembly, has to be given 48 hours ahead of assemblies, which risk to disturb transit in roads, peace or tranquility of the city population.
23. The first relevant question thus regards prior notice and its modalities. Is demanding prior notice for assemblies legitimate, and if so, do the modalities as stipulated in article 212 conform to international human rights law, principles and standards?

¹⁶ Human Rights Committee, General Comment No, 31, para. 6, CCPR/C/21/Rev.1/Add.13 de 26 May 2004.

¹⁷ Art 11 (1) Everyone has 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. (2) 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.

¹⁸ The OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's Commission for Democracy through Law (Venice Commission) have been providing legislative support and uses the guidelines as a basis for this work.

24. It is not necessary under international human rights law for domestic legislation to require advance notification about an assembly. However, to enable State authorities to fulfill their positive obligation, they may require a notification where a certain degree of disruption is anticipated¹⁹. The rationale is to allow State authorities to facilitate and safeguard the exercise of the right to freedom of peaceful assembly, to protect public safety and order and the rights and freedoms of others, *inter alia* rerouting traffic and deploying security forces when necessary,²⁰.
25. The fact that it is permissible to ask for a notification does not imply that States fulfill their positive obligation when facilitating and protecting those assemblies for which notice has been given *only*, while refusing to do so for others.
26. First, article 212 stipulates that the government must offer the necessary facilities for assemblies for which notice was given; this provision implies that spontaneous assemblies also need a notification to enjoy such facilities. It has been recognized under international human rights law, standards and principles that spontaneous peaceful assemblies form an integral part of the right to peaceful assembly. The Special Rapporteur recommends that spontaneous assemblies should be recognized in law, and be exempted from prior notification²¹. The Special Representative of the Secretary-General on Human Rights Defenders also advanced that human rights defenders should have the possibility of responding immediately to an event by holding peaceful assemblies²². And at the regional level, the European Court of Human Rights held 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.’²³ The Court thus concludes that spontaneous assemblies should be exempt from notification.

¹⁹ United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association*, at para. 52 and 90, U.N. Doc. A/HRC/20/27 (May 21, 2012). See also United Nations General Assembly, *Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, at para. 52, U.N. Doc. A/HRC/23/39.

It is the view of the Inter-American Commission on Human Rights [hereinafter IACHR] that the requirement of an advance permit is not compatible with the right to freedom of assembly, IACHR, *Second Report on the Situation of Human Rights Defenders*, para. 137.

²⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association*, at para. 26-28, U.N. Doc. A/HRC/20/27 (May 21, 2012); See also U.N. Human Rights Committee, *Sergey Praded v. Belarus*, Communication NO. 2029/2011, Para. 7.8., CCPR/C/112/D/2029/2011, (October 10, 2014): ‘The State party should be guided by the objective to facilitate the right, rather than seeking unnecessary or disproportionate limitations to it’. See also Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders*, (2011), para. 136.

²¹ United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association*, at ¶91 – specific recommendation, U.N. Doc. A/HRC/20/27 (May 21, 2012);

²² U.N. G.A., *Report of the Special Representative of the Secretary-General on Human Rights Defenders to the General Assembly*, A/61/312, para. 97.

²³ European Court of Human Rights [hereinafter ECtHR], *Bukta and Others v. Hungary*, at para. 36, Application No. 25691/04 (2007). ‘...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.’ See also ECtHR, *Molnar v Hungary*, Application No. 10346/05, para 38 for the understanding of special circumstances. ‘Special circumstances’ refers to cases in which an immediate response to a current event is warranted in the form of a demonstration.

Facilitating and protecting spontaneous assemblies – for which notifications are often practically impossible - falls under the positive obligations of the state. Announcing otherwise, as done in article 212, discourages and might form an impediment to spontaneous assemblies and the exercise of the right to peaceful assembly.

27. Further, The European Court of Human Rights held that if an assembly is peaceful, the fact that it is ‘illegal’²⁴ alone will not remove it from protection under the relevant article on the right to freedom of assembly²⁵. The Special Rapporteur has also underscored several times that ‘should the organizers fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions, or administrative sanctions, resulting in fines or imprisonment’²⁶. Again, article 212, which stipulates that the government offers the necessary facilities for public manifestations for which notice is given (*only*), does not seem to conform to international human rights law.
28. While a notification may be required, notification requirements may not be burdensome; they should be simple and fast²⁷. The Special Rapporteur has repeatedly underscored that notification should be subject to a proportionality assessment, not be unduly bureaucratic and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place²⁸. When subjecting the modalities as described in article 212 to the principles of legality and proportionality, some do not, on its face meet these requirements.
29. First, article 212 requires organizers de facto to indicate a ‘perfectly legitimate objective’ of their assembly²⁹. Article 20 of the ICCPR forbids propaganda for war, advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and acts aimed at the destruction of the rights and freedoms enshrined in the Covenant (articles 20 and 5). Apart from these objectives, it is considered best practice that assemblies are presumed to be legitimate³⁰ and peaceful³¹. Demanding explicit mention of the ‘perfectly legitimate objective’ in the notification therefore creates confusion. It suggests that the objectives for an assembly have to be specifically

²⁴ In this case it regarded a demonstration at a location where by national legislation no demonstrations were allowed.

²⁵ Former European Commission of Human Rights, *G v Germany*, 1989, as discussed in Interights, *Freedom of peaceful assembly and of association under the European convention on human rights*, 2010, p.9.

²⁶ United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association*, at para. 29, U.N. Doc. A/HRC/20/27 and United Nations General Assembly, *Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, at para. 51, U.N. Doc, A/HRC/23/39.

²⁷ See *supra* note 19, at para. 53.

²⁸ United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association*, at ¶28, U.N. Doc. A/HRC/20/27 (May 21, 2012). See also United Nations General Assembly, *Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, at para. 51, U.N. Doc, A/HRC/23/39.

²⁹ It regards a requirement for ‘bigger’ assemblies, more on that below.

³⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association*, at ¶26, U.N. Doc. A/HRC/20/27 (May 21, 2012). The OSCE-ODIHR, *Guidelines on freedom of peaceful assembly* indicate that ‘As a basic and fundamental right, freedom of assembly should be enjoyed without regulation insofar as is possible. Anything not expressly forbidden in law should, therefore, be presumed to be permissible.’ OSCE-ODIHR, *Guidelines on freedom of peaceful assembly*, Warsaw, 2010, p 15, para. 2.1.

³¹ OSCE-ODIHR, *Ibidem*, p. 15, para. 1.3.

motivated, namely to be 'perfectly legitimate'. The Special Rapporteur holds that notifications are to be considered unduly bureaucratic when they require that the reasons for the assembly be stated explicitly³². Taking into account the provisions of articles 20 and 5 of the ICCPR, the requirement to mention the 'perfectly legitimate objective' can be considered redundant and unclear and possibly allows for discretionary interpretation³³; it therefore does not comply with the principle of legality as described above.

30. Second, article 212 stipulates that a written notification is required 48 hours prior to assemblies (demonstrations)³⁴ which may disturb the transit on roads, peace and tranquility of the population in the city. The notions of 'peace and tranquility of the population in the city' are vague and subjective; they do not provide clear guidance for the organizers of assemblies so it is hard for the organizers to decide when (48 hours or less ahead) and how (written or not) such notice has to be submitted. What about a demonstration of ten people in front of a church? Does that disturb the tranquility of the population? What about an action of the same number of people with a content that some individuals within a church community may strongly disagree with, e.g. advocating for gay and lesbian rights? Does that disturb the tranquility of the population? The Human Rights Committee in its comment 34, clearly indicated that a law may not confer unfettered discretion and it must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of behavior is restricted and what is not. These vague and subjective notions do not pass the test of legality.

V. No-go zones and means to enforce

31. The second question of this amicus curiae, regards whether determining an area described as 'primary roads of continuous circulation' as a no-go zone for assemblies, including for blockages of roads, conforms with international human rights law, standards and principles and with what means such can be enforced.
32. In its resolution 25/38 of April 2014, the Human Rights Council 'urges States to facilitate peaceful protests by providing protestors with access to public space and protecting them, without discrimination, where necessary, against any form of threat and harassment, and underlines the role of local authorities in this regard.'³⁵
33. The Inter-American Commission on Human Rights has recognized that in a democratic society 'the urban space is not only an area for circulation, but also a space for

³² United Nations General Assembly, *Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, at para. 54, U.N. Doc. A/HRC/23/39.

³³ The -ODIHR guidelines on peaceful assembly have a specific guideline on content-based restrictions (guideline 3.3.): Assemblies are held for a common expressive purpose and, thus, aim to convey a message. Restrictions on the visual or audible content of any message should face a high threshold and should only be imposed if there is an imminent threat of violence. OSCE-ODIHR, *Ibidem*, para 3.3.

³⁴ The UN Special Rapporteur recognized that notices should be required a maximum of, for example 48 hours, prior to the holding of the assembly. United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association*, at ¶28, U.N. Doc. A/HRC/20/27 (May 21, 2012).

³⁵ UN General Assembly, *Resolution adopted by the Human Rights Council on the promotion and protection of human rights in the context of peaceful protests*, U.N. Doc. A/HRC/Res/25/38, no. 4.

participation'³⁶. In addition, as indicted above, peaceful assembly naturally comes with some disturbances. Institutions at both the Inter-American³⁷ and European regional level have clearly stated that tolerance, from the public and the authorities, towards those disruptions of life is required. The UN Special Rapporteur underscored that such disruptions are part of the mechanics of a pluralistic society in which diverse and sometimes conflicting interests coexist and find the forums and channels in which to express themselves³⁸. The European Court of Human Rights (ECtHR) held that:

Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic and, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly [...] is not to be deprived of all substance.³⁹

When the ECtHR flags the need for tolerance for disturbances on the road, it *a fortiori* recognizes roads can be used for protest. The OSCE guidelines underscore that, as part of the positive obligation, States should seek to facilitate and protect assemblies at the organizers' preferred location⁴⁰.

34. Both articles 213 and 214 of the Mobility Law restrict the locations for peaceful assemblies. Article 213 indicates that primary roads with continuous circulation cannot be used, unless momentarily e.g. to cross the road or when it is the sole way of accessing the target destination. By determining that security authorities can take the necessary measures to avoid blockage of primary roads with continuous circulations, article 214 of the same law, indicates that blockages of these roads are not allowed. The restrictions of articles 213 and 214 need to be analyzed against the three-prong test under international law.
35. **First**, restrictions to the right to freedom of peaceful assembly must be in conformity with the law and respect the legality principle. The mobility law defines 'primary roads'⁴¹ as physical areas, between different zones of a town, aimed at facilitating the flow of continuous vehicular traffic, or controlled by traffic lights, with the possibility to reserve lanes. However, 'continuous circulation' is not defined by the law and allows thus for discretionary interpretation. Is 'continuous circulation' defined by the number of cars passing through per hour? Can a road fall within this category depending upon the time of the day? Is 'continuous circulation' determined by the type of places a road connects in a

³⁶ IACHR, *Report*, para. 136, citing a decision of the Constitutional Tribunal of Spain, Decision 66/1995, p. 3.

³⁷ IACHR, *Annual Report of the Inter-American Commission on Human Rights, Volume II. Report of the Special Rapporteur for freedom of expression to the Inter-American Commission*, 2008, Chapter IV, para. 70.

³⁸ United Nations General Assembly, *Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, at para. 65, U.N. Doc, A/HRC/23/39.

³⁹ ECtHR, *Ashughyan v. Armenia*, App. No. 33268/03, 2008, para. 90. See also ECtHR, *Balcik v. Turkey*, App. No. 25/02, 2007, para. 52: 'In the Court's view, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance'. Also ECtHR, *Oya Ataman v. Turkey*, App. No. 74552/01, 2006, para. 41-41.

⁴⁰ OSCE-ODIHR (Office for Democratic Institutions and Human Rights), *Guidelines on freedom of peaceful assembly*, Principle 2.2., Warsaw.

⁴¹ Article 178, Mobility Law : 'Primary Roads: Physical spaces with the function to facilitate the flow of continuous vehicle traffic or [traffic] controlled by traffic lights, connecting different zones of the city, with the possibility to reserve exclusive lanes.'

town? Or, are 'primary roads with continuous circulation', roads without traffic lights, contrary to many 'ordinary' 'primary roads'? The law does not provide guidance in answering any of these questions. Therefore, the notion 'primary roads with continuous circulation', on its face does not provide the necessary precision required for clarity and notice. When identifying the route of peaceful assemblies, organizers will not know whether a particular road can be used and different public authorities may interpret the roads, which can be used differently. The standard defined by the Human Rights Committee in its General Comment No. 34, requiring that a law may not confer unfettered discretion⁴² or use vague terminology is not met.

36. **Second**, only the aims as described by article 21 of the ICCPR can be considered legitimate aims. That is, restrictions on the right to freedom of peaceful assembly must be 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. These legitimate aims must be interpreted strictly.⁴³
37. The Human Rights Committee has found that when a State invokes national security and protection of public order as a reason to restrict rights, the State party must prove the precise nature of the threat.⁴⁴ The Mobility Law indicates in its first article that the law aims to serve the public order and the general interest. Yet, as mentioned above, disturbances, are naturally to be expected with peaceful assemblies, trying to avoid them for the population clearly does not in itself amount to one of the legitimate aims mentioned in article 21 of the ICCPR⁴⁵. The United Nations Special Rapporteur has warned that the free flow of traffic should not automatically take precedence over freedom of peaceful assembly⁴⁶; his view is shared by the findings of the ECtHR and the OAS Special Rapporteur on freedom of expression as cited above⁴⁷.
38. In this case, the provisions of article 213, stipulating a blanket ban on the use of a widely defined group of roads, as well as the provisions of article 214, stipulating an *a fortiori* blanket ban on blockages of the same roads, appear to allow the government power to restrict the right to freedom of peaceful assembly for purposes beyond 'national security or public security, public order (*ordre public*), public health or morals, or the protection of the rights and freedoms of others'.
39. **Third**, for restrictions to be 'necessary in a democratic society' they must be proportional. The Human Rights Committee has explained 'they [the restrictions] must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the

⁴² U.N. Human Rights Committee, *General Comment No. 34*, para. 25.

⁴³ U.N. General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, at ¶19, U.N. Doc. A/61/267 (August 16, 2006).

⁴⁴ It regards an interpretation of the exact same wording of the ICCPR in a case of freedom of association. U.N. Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, Communication No. 1119/2002, U.N. Doc. CCPR/C/84/D/1119/2002 at ¶7.3 (2005); *See also* IACHR, *Report*, at ¶166.

⁴⁵ *See supra*, note 36 and 37.

⁴⁶ OSCE-ODIHR, *Ibidem*.

⁴⁷ *See supra*, note 36 and 37.

interest to be protected.⁴⁸ The Human Rights Committee has clarified that the State must demonstrate that the restrictions placed on the right are in fact necessary to avert a real and not only a hypothetical danger⁴⁹. In other words, the State measure must pursue a pressing need, and it must be the least severe (in range, duration, and applicability) option available to the public authority in meeting that need.⁵⁰

40. It is unlikely that a complete ban on accessing ‘primary roads with continuous circulation’ or the general ban on blocking those roads would meet the ICCPR’s proportionality requirement. First, a total ban is necessarily not the least restrictive measure available to the State and the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association holds as best practice those laws:

... 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 authorities may prohibit a peaceful assembly only when a less restrictive response would not achieve the legitimate aims pursued by the authorities.⁵¹

41. In addition, the definition of ‘primary roads with continuous circulation’, potentially encompasses almost every road in Mexico City⁵². The impact upon peaceful assembly is thus very far-reaching, excluding major parts of Mexico City for peaceful assembly. This is not only at odds with the best practices that States should always seek to facilitate and protect public assemblies at the organizers’ preferred locations⁵³ and take appropriate facilitating measures⁵⁴, it also risks limiting protesters to the back corners of town away from sight and sound of their target audience⁵⁵, undermining the essence of the right to freedom of peaceful assembly⁵⁶. Recognising the challenge of nationally created ‘no-go zones’, the ECtHR, in the case of *Nurettin Aldemir and others vs Turkey*⁵⁷, found a violation

⁴⁸ U.N. Human Rights Committee, *General Comment No. 27*, *supra* note 9 at ¶14; *See also* ECtHR, *Arslan v. Turkey*, App. No. 23462/94, at ¶ 46.

⁴⁹ U.N. Human Rights Committee, *Aleksander Belyatsky et al v. Belarus*, Communication No. 1296/2004, UN Doc. CCPR/C/90/D/1296/2004, 7 August 2007, para. 7.3.

⁵⁰ *See Lee v Republic of Korea*, para. 7.2.

⁵¹ United Nations Human Rights Council, *Report of the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association*, at ¶39, U.N. Doc. A/HRC/20/27 (May 21, 2012).

⁵² Depending upon the meaning given to ‘continuous circulation’, for which the lack of clarity is problematic as indicated above.

⁵³ OSCE-ODIHR, *Guidelines on the freedom of peaceful assembly*, p.15, para. 2.2.

⁵⁴ The Inter-American Commission on Human Rights has clearly 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’. Inter-American Commission on Human Rights, *Report on citizen security and human rights*, at para. 193, OEA/Ser.L/V/II. Doc 57 (2009). Also in para. 193: The State has an obligation to supply its police officers with the equipment and communication devices, vehicles, means of personal defense and non-lethal deterrence suitable for intervening in the event of problems. The police must also receive clear and unequivocal instructions that their job is to protect the participants in a public meeting or demonstration or mass gathering so long as they are exercising their right.

⁵⁵ Assemblies should fundamentally always be facilitated within sight and sound of the target audience. United Nations General Assembly, *Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, at para. 60, U.N. Doc. A/HRC/23/39.

⁵⁶ Contrary to the principles laid down by the U.N. Human Rights Committee in its General Comment No. 27. *See above*, note 9.

⁵⁷ ECtHR, *Nurettin Aldemir and others vs Turkey*, App Nos. [32124/02](#), [32126/02](#), [32129/02](#), [32132/02](#), [32133/02](#), [32137/02](#) and [32138/02](#), para. 34 and 44-48.

of the freedom of assembly when public authorities dispersed a demonstration in a location where assemblies were not permitted by Turkish law.

42. Roads can be blocked by moving or static assemblies. Static assemblies and sit-ins are protected under international human rights law as integral part of the right to freedom of peaceful assembly⁵⁸. Several cases at the European level confirm on the one hand the recognition of sit-ins or blockages as tools to exercise the right to freedom of peaceful assembly and on the other hand the need for proportional measures when disrupting them. The *Case of Eva Molnar vs Hungary*⁵⁹ demonstrates that blocking of roads cannot be generally banned and dispersing demonstrations, which block roads have to pass the proportionality test. In this particular case elements such as the numbers of hours the assembly lasted and the centrality of the blocked bridge were taken into consideration. In other cases, length and number of previous demonstrations were taken into account as criteria to measure proportionality⁶⁰.
43. Finally, article 214, determines that the security authorities can take the measures necessary to avoid a blockage⁶¹ of the 'primary roads with continuous circulation'. The arguments made above clarify that according to international law, standards and principles, blockages cannot always be immediately dispersed or avoided. In addition to the discussed proportionality challenge, caution is warranted on the means used to disperse or avoid blockages and peaceful assemblies in general. The U.N. Human Rights Council in its Resolution 19/35, urges all States to avoid using force wherever possible during peaceful protests, and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force (para. 6). The same body held that lethal force may only be used to protect against an imminent threat to life and it may not be used merely to disperse a gathering⁶². In addition, States need to make available protective equipment and non-lethal weapons to the security forces, develop protocols for the use of non-lethal weapons and provide management of peaceful protest tools so as to prevent *inter alia* injuries⁶³.
44. In the *Case of the Caracazo v Venezuela*, the Inter-American Court on Human Rights fully confirmed the same: '[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,

⁵⁸ European Commission on Human Rights, *G. vs Germany*, 1987. As discussed in Interights, *Freedom of peaceful assembly and of association under the European convention on human rights*, 2010, p.9. And OSCE-ODIHR, *Guidelines on the freedom of peaceful assembly*, p. 15, para. 1.2. and p.31.

⁵⁹ ECtHR, *Éva Molnár vs Hungary*, Application No. 10346/05, para. 41-44.

⁶⁰ ECtHR, *Çiloğlu and Others v. Turkey* 2007, App. No. No 73333/01. It regarded weekly protests with blockages for over three years.

⁶¹ By static and non-static assemblies.

⁶² U.N. General Assembly, *Human Rights Council on the promotion and protection of human rights in the context of peaceful protest*, at para. 8, U.N. Doc. A/HRC/22/L.10.. See also U.N. General Assembly, *Human Rights Council. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, at para. 75, U.N. Doc. A/HRC/26/36.

⁶³ *Ibidem*, at para. 10-12.

and respecting the rights to life and to human treatment.’⁶⁴ The Inter-American Commission on Human Rights developed a 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 basis⁶⁵.

45. As all use of force must meet the proportionality criteria, the broad provision of article 214, allowing all ‘necessary means’ in any situation of blocked roads, does not conform with international human rights law, standards and principles.

VI. Conclusion

46. The U.N. Special Rapporteur believes that the provisions 212, 213 and 214 of the Mobility Law of the Federal District of Mexico, do not comply with the obligations of the State and the conditions for legitimate restrictions to the right to freedom of peaceful assembly under international law, standards and principles. Above all, the principle of proportionality is not observed. The U.N. Special Rapporteur hereby invites the Supreme Court of Mexico to proceed to a thorough analysis of the mentioned provisions against the positive obligations of the State and the three-pronged test for allowable restrictions to the right to freedom of peaceful assembly under international law. In this manner the Supreme Court of Mexico can fulfill a critical role in ensuring respect for human rights, as determined by international law, for the people in the State of Mexico.

20th of August, 2015

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United Nations Special Rapporteur
on the Rights to Freedom of Peaceful Assembly and of Association

⁶⁴ Inter-American Court of Human Rights, *Case of the Caracazo v Venezuela*, at para. 127, 2002.

⁶⁵ Inter-American Commission on Human Rights, *Report on the situation of Human Rights Defenders in the Americas*, para. 68. It includes a.o. keeping of ammunition registration and control system and communication records.