

Addendum of select sources and illustrative practical examples

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

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I. Introduction

1. This document is designed to be read together with 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). It lists key secondary resources relating to the principles and recommendations contained in the joint report, as well as offering (where appropriate) examples of State laws and practice in their implementation. These have been gleaned through expert meetings and the questionnaire disseminated during the preparation of the joint report, and have not been independently investigated or verified. They are therefore intended to be illustrative only.

II. Select sources and practical examples

A. States shall respect and ensure all rights of persons participating in assemblies

Sources

2. For a detailed explanation of States' obligations to respect and ensure all rights, see: Manfred Nowak, UN Covenant on Civil and Political Rights, CCPR Commentary (2005) 37.

3. For a discussion of discriminatory regulation of the right to freedom of assembly in relation to vulnerable groups, see: Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (14 April 2014) [A/HRC/26/29].

Practical Examples

4. In Colombia, article 42 of Decree 599 of 2013 provides that the Prevention and Emergency Support Fund shall, by means of administrative acts, issue standard emergency and contingency guidelines and plans. Such guidelines are required to include recommendations for reducing risks that might affect the security of those participating in, or affected by, a public assembly, particularly children and adolescents, older persons, pregnant women and persons with disabilities. See: response from the Colombia to questionnaire developed under A/HRC/RES/25/38.

B. Every person has the inalienable right to take part in peaceful assemblies

Sources

5. For an overview of the procedural and practical measures for holding peaceful assemblies, including notification, see: Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (24 April 2013) [A/HRC/23/39]. For guidance on general good practices, see: and Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (21 May 2012) [A/HRC/20/27].

6. For regional perspectives, see: African Commission on Human and Peoples' Rights, Report of the Study Group on Freedom of Association & Assembly in Africa (2014); African Commission on Human and Peoples' Rights, Resolution on the Drafting of

Guidelines on Freedom of Association and Assembly in Africa 319 (2015); and OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, second edition (2010).

Practical Examples

7. An illustrative example of how the presumption in favour of assembly may be given effect in law is contained in the New Zealand Bill of Rights Act (1990). The Act explicitly protects the right to freedom of peaceful assembly (section 16), and makes any limitations subject to legality, necessity and proportionality tests (section 5). Section 6 of the Act requires that when dealing with possible inconsistencies between laws, the meaning that is consistent with the rights and freedoms contained in the Bill of Rights shall be preferred to any other meaning.

8. Any notification process should also be widely accessible. Measures for enhancing accessibility will depend on the context. For example, in States where internet penetration is high, an online lodgement system is advisable - Glasgow City Council in Scotland allows organizers to submit a notification via post, email, or online. However, requiring online lodgment may reduce accessibility in States where large sections of the populace lack internet access.

9. Any notice period should be the shortest possible while still enabling the authorities to take appropriate steps to protect and facilitate the assembly. Ideally, the notice should be 48 hours (A/HRC/20/27). This is broadly consistent with the practice of many States: Malta, South Korea, Trinidad and Tobago, Turkey, and Colombia, all require at least 48 hours notice. Several States which responded to the questionnaire, and which have a system of prior notification, have a longer notice period, for example Romania (3 days), Albania (3 days), Czech Republic (5 days), Georgia (5 days), and the United Kingdom and Northern Ireland (6 days).

10. It is also critical that the system for receiving notices is designed to facilitate exercise of the right. For example, in South Africa, any member of the police who receives information on a proposed gathering bears a responsibility to act properly on this information and facilitate the assembly by assisting the organizers (section 3(5), Regulation of Gatherings Act (1993)).

11. It is considered good practice to expressly exempt from notification requirements assemblies, which do not require prior preparation by State authorities. For example, in Moldova, notification is only required for assemblies with over 50 participants (Law No. 26-XVI of 2008).

12. Exception to notification requirements should also be made for spontaneous assemblies. Estonia's Law Enforcement Act (2011) makes a specific exception to notification for spontaneous assemblies (section 67(3)), and also provides a qualified exception for assemblies in which it is impracticable to provide notification in the required timeframe, or where this would defeat the expressive purpose (section 67(4)) (response from the Republic of Estonia to questionnaire developed under A/HRC/RES/25/38). Similar exceptions are made in the laws of a number of other States, including Albania and Taiwan.

C. Any restrictions imposed on peaceful assemblies shall comply with international human rights standards

Sources

13. An extensive discussion of the permissible grounds for restrictions is contained in the OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, second edition (2010).

An issue of particular concern in many States is the use of counter-terrorism legislation and measures as a ground for restricting assemblies. The impact of counter-terrorism measures on human rights is discussed in: Martin Scheinin, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (16 August 2006) [A/61/267].

14. A content-based restriction is justified only where it is justified under article 19 or 20 of the International Covenant on Civil and Political Rights (ICCPR). For more on incitement to discrimination, hostility or violence, see: Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Conclusions and recommendations emanating from the four regional expert workshops organised by OHCHR, and adopted by experts in Morocco, 2012); and Frank La Rue, Promotion and protection of the right to freedom of opinion and expression (7 September 2012) [A/67/357].

15. The European Court has developed specific jurisprudence on restrictions on symbols (such as uniforms, flags, etc). For a useful summary, see: OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, second edition (2010) ¶ 97.

Practical Examples

16. The body with authority and responsibility for determining whether any restrictions on the notified assembly should not be granted excessive discretion, and should follow a process which is fair and objective, and based on unambiguous criteria. The Parades Commission in Northern Ireland - an independent, quasi-judicial body with powers and duties under the Public Processions (Northern Ireland) Act (1998) - is considered a good example of such an institution. Information on the Commission's decision-making process is available in its publication Public Processions and Related Protest Meetings: Procedural Rules (2005), available at <https://www.paradescommission.org/getmedia/45e15b11-ffe7-4b11-b603-10a9f2e59ca5/NorthernIrelandParadesCommission.aspx>.

D. States shall facilitate the exercise of the right of peaceful assembly

Sources

17. There is evidence that women in security forces (including law enforcement) are more likely than their male counterparts to defuse tension. For more information in this regard, see: DCAF Gender and Security Sector Reform Training Resource Website, at www.gssrtraining.ch/index.php/en/. See also: Women in Peacekeeping at www.un.org/en/peacekeeping/issues/women/womeninpk/shtml and Gender Sensitive Police Reform in Post Conflict Societies at www.unwomen.org/~media/Headquarters/Media/Publications/UNIFEM/GenderSensitivePoliceReformPolicyBrief2007eng.pdf.

18. For an analysis of the criminalization of assemblies in the American context, see: Inter-American Commission on Human Rights, Annual Report 2007, Chapter IV, (discussing Inter-American Court of Human Rights, Ricardo Canese v. Paraguay (Judgment) 31 August 2004).

19. For generally accepted good principles and practice on the treatment of prisoners and prison management, see: United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) [A/RES70175].

Practical Examples

20. For an example of recommendations made following lessons learned by law enforcement when preparing for the G8 and G20 summits in Canada, see: Office of the Independent Police Review Director, Policing the Right to Protest G20 Systemic Review Report (May 2012).

21. In Germany, anti-conflict teams (law enforcement officers trained in behavioural psychology and communication skills) serve as a point of contact for participants during assemblies, preventing tension and ensuring transparent police interventions. See: response from the Federal Republic of Germany to questionnaire developed under A/HRC/RES/25/28.

22. In Colombia, an arrest may be made only where: (1) a prior written warrant has been issued by the competent authority; and, (2) the offender has been caught in or immediately following the act of committing a criminal or police offence. (Article 56 of Decree 1355 of 1970). See: response from Colombia to questionnaire developed under A/HRC/RES/25/38.

E. Force should not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law

Sources

23. For a broad overview of the relevant international human rights standards for law enforcement, see: OHCHR, International Human Rights Standards for Law Enforcement, available at <http://www.ohchr.org/Documents/Publications/training5Add1en.pdf>. This pocketbook was developed as one component of a package of materials for human rights training of police. The full package of material can be accessed at <http://www.ohchr.org/Documents/Publications/training5en.pdf> and <http://www.ohchr.org/Documents/Publications/training5Add2en.pdf>.

24. For a detailed discussion on the normative framework governing the use of force and an analysis of State's compliance at the domestic level, see: Christof Heyns, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (1 April 2014) [A/HRC/26/36].

25. For detailed guidance on the establishment of a legal and operational framework for law enforcement, see: Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (August 2015).

26. For information on the impact of less lethal weapons (and other law enforcement equipment), see: Omega Research Foundation & Amnesty International, The Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment (2015); Physicians for Human Rights, Weaponizing Tear Gas: Bahrain's Unprecedented Use of Toxic Chemical Agents against Civilians (August 2012); Amnesty International, USA, "Less than Lethal"? The Use of Stun Weapons in US Law Enforcement (December 2008); and Amnesty International, Spain, The Right to Protest under Threat (April 2014). See also: mispo.org for images of military, security and police equipment covering every aspect of the trade in such weapons (www.mispo.org) and Omega Research Foundation (www.omegaresearchfoundation.org) for research on the manufacture, trade and use of, military, security and police equipment.

27. For access to domestic laws and policies, from across the globe, regulating the use of force see: www.use-of-force.info. For access to use of force policies from one hundred of the largest United States city police departments, see: www.useofforceproject.org.

Practical Examples

28. In Argentina, the carrying of firearms by any law enforcement official who may come into direct contact with participants in an assembly, in the exercise of their duties during the operation, is clearly prohibited. See: Minimum Criteria for the Development of Protocols for Action by the Federal Police and Security Forces during public demonstrations (response from Argentina to questionnaire developed under A/HRC/RES/25/38).

29. In Colombia, chapter 1(6) of Resolution 03516 of 2009 sets out the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Chapter 1(6) of Resolution 03516 of 2009 further contains provisions on responsibility for the use of force and firearms and requires that all instances of the use of force shall be reported to a superior officer, who shall be responsible for examining the facts, coming to conclusions and circulating them, as well as applying disciplinary and administrative measures as necessary. Command responsibility is also contained in chapter 1(6).

F. Every person shall enjoy the right to observe, monitor and record assemblies

Sources

30. For guidance on general human rights monitoring, and monitoring in the context of assemblies, see: Office of the United Nations High Commissioner for Human Rights, Training Manual on Human Rights Monitoring (United Nations publication, Sales No. E.01.XIV.2); and OSCE/ODIHR, Handbook on Monitoring Freedom of Peaceful Assembly (2011).

31. For theoretical and practical tools to raise awareness of the the duties and obligations of law enforcement in relation to freedom of expression, press freedom and safety of journalists, see: UNESCO, Freedom of Expression and Public Order Training Manual (2015), available at <http://unesdoc.unesco.org/images/0023/002313/231305e.pdf>. See also: OSCE, Special report: handling of the media during political demonstrations (2007).

32. For a discussion of the role of ICT's in the protection of the right to life – including rights to record and record back, and body-worn cameras – see: Christof Heyns, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Use of information and communications technologies to secure the right to life (24 April 2015) [A/HRC/29/37].

Practical Examples

33. As an example of how good practices in relation to monitors of assemblies may be implemented, security forces in Argentina are under an obligation to respect, protect and guarantee the activities of journalists (including photographers, cameramen and others). Journalists may not be harassed, detained, moved or suffer any restriction of their rights while pursuing their profession during assemblies. Law enforcement are further prohibited from preventing the recording of images or conducting of interviews in the course of assemblies. See: Minimum Criteria for the Development of Protocols for Action by the Federal Police and Security Forces during public demonstrations (response from Argentina to questionnaire developed under A/HRC/RES/25/38).

34. NHRI's and international institutions have important roles to play in the monitoring of assemblies. For example, OHCHR Cambodia has taken on an active role monitoring assemblies in that country in recent years. In an assembly in November 2013, OHCHR was in contact with the Police Commissioner before and during the assembly, and played a

mediating role with assembly organizers, which contributed to the peaceful conduct of the assembly (information provided by OHCHR Cambodia).

35. Such institutions also have a role to play in supporting State authorities to comply with their human rights obligations, by, for example, providing technical support. For example, Chile's NHRI, the Instituto Nacional de Derechos Humanos (INDH), has worked closely with Chilean law enforcement in the development of a series of protocols for the policing of assemblies. It has also worked with the Regional Office for South America of the United Nations High Commissioner for Human Rights (OHCHR) to compile and systematize the international, regional and Chilean human rights standards that apply to social protests (see: *Protesta social y derechos humanos: Estándares Internacionales y Nacionales* (2015)). (Information provided by INDH).

G. The collection of personal information in relation to an assembly must not interfere impermissibly with privacy or other rights

Sources

36. The question of the impact of communications surveillance and data protection on the right to privacy has in recent years gained increasing attention within the United Nations human rights mechanisms. For an insightful overview of the issue, see: Report of the Office of the United Nations High Commissioner for Human Rights: The right to privacy in the digital age (30 June 2014) [A/HRC/27/37]; and Frank La Rue, Report of the Special Rapporteur on the right to freedom of opinion and expression [A/HRC/23/40]. On the specific issue of internet surveillance, see: Human Rights Council resolution on the promotion, protection and enjoyment of human rights on the Internet [A/HRC/RES/20/8]. See also: Office of the Special Rapporteur for freedom of expression, Inter-American Commission on Human Rights, *Freedom of Expression and the Internet* (2013).

37. Issues of data protection are also attracting attention at the regional level. See: Handbook on European data protection law (2014) (and the proposed General Data Protection Regulation); African Union Convention On Cyber Security And Personal Data Protection (EX.CL/846(XXV)); and the Inter-American Juridical Committee report titled *Protection of Personal Data* (2015) [OEA/Ser.Q March 23-27, 2015 CJI/doc. 474/15 rev.2].

38. Civil society has engaged actively with this issue, often within the discourse on the protection of human rights defenders. In 2013, a broad coalition of civil society actors developed and launched the International Principles on the Application of Human Rights to Communications Surveillance, available at: <https://en.necessaryandproportionate.org/text>. See also: Frontline Defenders, *Digital Security & Privacy for Human Rights Defenders* (2009); Global Information Society Watch, *Communications Surveillance in the Digital Age* (2014); and Stephanie Hankey and Daniel Ó Clunaigh, 'Rethinking Risk and Security of Human Rights Defenders in the Digital Age', *Journal of Human Rights Practice* (2013) 5(3): 535-547.

39. The risks associated with deploying undercover law enforcement officers to police assemblies, and to infiltrate protest movements, have also attracted significant attention. For example, allegations of serious misconduct by undercover officers in the UK have led to the establishment of a judge-led inquiry into police surveillance of campaigning and protest groups (see: <https://www.ucpi.org.uk/about-the-inquiry/>).

H. Every person has the right to access information related to assemblies

Sources

40. For analysis of the right to access information under international law, see: Frank La Rue, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (4 September 2013) [A/68/362]. At the regional level, see: Office of the Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights, *The Inter-American Legal Framework Regarding The Right To Access To Information* (Second Edition; 2011) [OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12]; Council of Europe Convention on Access to Official Documents (2008) [CETS No.205]; and the African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression in Africa (2002).

41. Guidance on the drafting of access to information legislation may be found in the Model Inter-American Law On Access To Public Information [AG/RES. 2607 (XL-O/10)] (2010), and the African Commission on Human and Peoples' Rights Model Law on Access to Information for Africa (2013).

42. While enacting access to information legislation is a critical step, an implementation gap persists in many States, including authorities' failure to respond, or to respond fully to requests for information, inappropriate or illegitimate refusals to furnish information, and failure to compile and publicly disclose key information. For a discussion of these challenges in relation to assemblies, see: Access Info Europe, *The Transparency of the Policing of Protests* (2015), available at: http://www.access-info.org/wp-content/uploads/Police-and-Protest-Report_Final.pdf; and Open Society Justice Initiative, et al, *Police Transparency: Evaluating Access to Information in Relation to the Policing of Public Gatherings in Brazil, India, Mexico, South Africa and the United Kingdom* (2015).

Practical Examples

43. Oversight bodies may take a range of structures, including Information Commissioners (for example, in the UK, Slovenia, and Serbia), a Commission or Institute (for example, in Mexico and Portugal), an ombudsman given oversight of the right (for example in Sweden, Bosnia, New Zealand) or another body given oversight of the right (for example, in South Africa and Turkey). For a helpful summary of typical functions and powers, see: Right2Info, "Information Commission/Ers And Other Oversight Bodies And Mechanisms", available at <http://www.right2info.org/information-commission-ers-and-other-oversight-bodies-and-mechanisms>.

I. Business enterprises have a responsibility to respect human rights in the context of assemblies

Sources

44. On business enterprises' general obligations in relation to human rights, see: John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (7 April 2008) [A/HRC/8/5]; and John Ruggie, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (21 March 2011) [A/HRC/17/31].

45. On good practices by civilian private security services, see: *Voluntary Principles on Security and Human Rights* (2000), available at <http://www.voluntaryprinciples.org/>, as

well as the accompanying Implementation Guidance Tools (2011); and International Code Of Conduct For Private Security Service Providers (2010), available at http://icoca.ch/sites/all/themes/icoca/assets/icoc_english3.pdf. See also: United Nations Office on Drugs and Crime, State Regulation concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety (2014). Extensive additional information is available on the Addressing Security and Human Rights Challenges in Complex Environments: Knowledge Hub, at <http://www.securityhumanrightshub.org/>

46. For information on business enterprises and surveillance technologies, see: Bloomberg, “Wired for Repression: Surveillance Tech & Repressive Regimes”, available at <http://topics.bloomberg.com/wired-for-repression/>; Tim Maurer, Edin Omanovic, and Ben Wagner, Uncontrolled Global Surveillance Updating Export Controls to the Digital Age (2014); and, Cindy Cohn, Trevor Timm, & Jillian C. York, Human Rights and Technology Sales: How Corporations Can Avoid Assisting Repressive Regimes, Electronic Frontier Foundation (2012).

Practical Examples

47. A number of jurisdictions have passed what are commonly referred to as ‘anti-SLAPP laws’, including 28 United States states. SLAPPs, ‘strategic lawsuits against public participation’, are civil suits usually brought by a business entity to stifle criticism or opposition, including by assembly participants. While anti-SLAPP laws vary, many allow defendants the opportunity to recover their legal fees or allow the judge to impose a financial penalty on the plaintiff, where it is established that the suit was frivolous or designed to chill public participation. For example, the Australian Capital Territory’s Protection of Public Participation Act (2008) protects conduct intended to influence public opinion or promote or further action in relation to an issue of public interest, by providing that the plaintiff may be ordered to pay a financial penalty to the Territory.

J. The State and its organs shall be held accountable for their actions in relation to assemblies

Sources

48. For a detailed overview of police accountability, see: UNODC, Handbook on Police Accountability, Oversight and Integrity (2011). For a helpful review of international and regional standards relating to oversight of law enforcement, see: Amnesty International Dutch Section, Police Oversight (Police and Human Rights Programme – Short Paper Series No. 2) (2015).

49. For information on civilian oversight of law enforcement, see: Council of Europe: Commissioner for Human Rights, Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police (12 March 2009); and Tamar Hopkins, An Effective System for Investigating Complaints against Police: A Study of Human Rights Compliance in Police Complaint Models in the US, Canada, UK, Northern Ireland and Australia, Victorian Law Foundation (2009).

50. For further guidance on a victim’s right to a remedy, see: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law [A/RES60/147].

51. For detail on superior and command responsibility, including liability for inappropriate planning, unlawful orders and insufficient supervision or control, see:

Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (August 2015), chapters 3 and 10.

Practical Examples

52. Research shows that the process of non-adversarial peer reviews of policing operations fosters organizational learning. The results of the research indicate that organizational learning is contributed to in three ways: hosts receive informed and constructive feedback; reviewers gain a lot of additional experience; and insights and the exchanges taking place in the course of or following the reviews contribute to the identification of good practices and the development of professional norms. See: Otto Adang, *Non adversarial peer reviews of policing operations: fostering organizational learning* (forthcoming in the *European Journal of Policing Studies*, 2016).

53. In Argentina, any police or security official under criminal or administrative investigation, or who has been sentenced for irregularities committed in public demonstrations and/or for the excessive use of force, is excluded from policing of assemblies. See: *Minimum Criteria for the Development of Protocols for Action by the Federal Police and Security Forces during public demonstrations* (response from Argentina to questionnaire developed under A/HRC/RES/25/38).

54. In Romania, weapons and ammunition that are issued to the Gendarmes are logged in a register at the weaponry room. Any operational orders that are issued by authorised commanders are written and recorded in the *Operational Actions Journal* and are further logged in a register (response from Romania to the questionnaire developed under A/HRC/RES/25/38).