**Written submission prepared by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule on the occasion of the half-day of general discussion in preparation for a General Comment on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights**

**Geneva, 20 March 2019**

The Special Rapporteur on the rights of freedom of peaceful assembly and of association since the establishment of its mandate on 2010 through [resolution 15/21](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/15/21) has been a strong advocate for the promotion and protection of its mandated rights and the elaboration of a General Comment by the Human Rights Committee.

During its nine years of existence, eight thematic reports have been presented to the Human Rights Council while six have been presented to the General Assembly on a wide variety of issues. In addition, one joint thematic repot on the proper management of assemblies was developed in conjunction with the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions and presented to the Human Rights Council.

The mandate has also conducted ten country visits (Georgia, United Kingdom, Rwanda, Kazakhstan, Oman, Chile, Republic of Korea and the United States of America, Tunisia, Armenia, including a follow up visit to the United Kingdom) and has sent more than 1’139 communications between May 2011 to May 2018 that have resulted in the elaboration of six Observations reports on communications transmitted to governments and non-State actors and the replies received from them.

The need to develop a General Comment on articles 21 of the International Covenant on Civil and Political Rights has been identified since the beginning of the mandate as an important tool to assist the work of the mandate.

In this regard, the first thematic report presented to the Human Rights Council on “Best practices that promote and protect the rights to freedom of peaceful assembly and of association” (A/HRC/20/27) recommends to the Human Rights Committee to consider developing such a General Comment. This recommendation was followed up by with a letter addressed to the Human Rights Committee on 24 July 2012 and was also echoed in consequents reports when tackling the “Challenges faced by groups most at risk when exercising or seeking to exercise the rights to freedom of peaceful assembly and/or of association” (A/HRC/26/29) and in the report on “Fundamentalism and its impact on the rights to freedom of peaceful assembly and of association” (A/HRC/32/36).

Likewise, thought out the reports of the mandate, the use of the Human Rights Committee’s General Comments has been consistently made with the view of strengthening the mandate’s work and in this regard it has been cited repeatedly General Comments No. 18 on non-discrimination, No. 25 on the right to participate in public affairs, voting rights and the right of equal access to public service, No. 31 on the nature of the General Legal Obligation Imposed on States Parties to the Covenant, No. 34 on the right to Freedoms of opinion and expression (Article 19), etc.

This written submission intends to provide a comprehensive response to the questions prepared by the Rapporteur in charge of the drafting of the General Comment, based on the wealth of resolutions, reports and findings of the mandate of the Special Rapporteur on the right to freedom of peaceful assembly and of association.

**Questions directly related to article 21**

# **Question 1**

# ***What are the unique features of the right to peaceful assembly, which distinguishes it from other related rights such as freedom of expression and political participation?***

***What is the function, added value and rationale for this right in a social system based on democracy and human rights?***

The rights to freedom of peaceful assembly play a key role as an enabling right in opening up spaces and opportunities for genuine and effective engagement by civil society actors and individuals in decision-making processes. This rights help to foster increased transparency and accountability and is a basic prerequisites for the ultimate goal of securing substantive enjoyment different human rights and the sustainable development goals. The right to peaceful assembly can facilitate constructive dialogue, which is necessary given the shared interests and sometimes competing priorities that are intrinsic to societies.

The rights to freedom of peaceful assembly and of association are among the many rights on the list of international human rights; just as all human rights, they are universal, indivisible, interdependent and interrelated.[[1]](#footnote-1)

Moreover, the rights to freedom of peaceful assembly and of association are fundamental human rights, not only for all functioning democracies, but also for autocratic Governments. A single variable such as freedom of peaceful assembly and of association can actually serve as a barometer for measuring the situation pertaining to, and the enjoyment of, human rights in any given country and a useful proxy for how open or closed countries and their national institutions are.[[2]](#footnote-2)

The rights to freedom of peaceful assembly and of association serve as a vehicle for the exercise of many other civil, cultural, economic, political and social rights and are essential in the implementation process of Agenda 2030 on Sustainable Development[[3]](#footnote-3).

These rights are essential components of democracy as they empower women and men to “express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable” (Council resolution 15/21, preamble). Such interdependence and interrelatedness with other rights make them a valuable indicator of a State’s respect for the enjoyment of many other human rights.[[4]](#footnote-4)

The ability to assemble and act collectively is vital to democratic, economic, social and personal development, to the expression of ideas and to fostering engaged citizenry. Assemblies can make a positive contribution to the development of democratic systems and, alongside elections, play a fundamental role in public participation, holding governments accountable and expressing the will of the people as part of the democratic processes.

Assemblies are also an instrument tool through which other social, economic, political, civil and cultural rights can be expressed playing a critical role in protecting and promoting a broad range of human rights. They can be instrumental in amplifying the voices of people who are marginalized or who present an alternative narrative to established political and economic interests. Assemblies present ways to engage not only with the State, but also with others who wield power in society, including corporations, religious, educational and cultural institutions, and with public opinion in general.[[5]](#footnote-5)

More specifically, the rights to freedom of peaceful assembly and of association are a critical means for individuals and groups of individuals to participate in public affairs. The exercise of such rights provides avenues through which people can aggregate and voice their concerns and interests and endeavor to fashion governance that responds to their issues. These are enabling rights in order to campaign and participate in public rallies, form political parties, participate in voter education activities, cast votes, observe and monitor elections and hold candidates and elected officials accountable.[[6]](#footnote-6)

*Does the scope of the right differ depending on the context (for example, is it the same during political transitions)?*

The rights to freedom of peaceful assembly and of association are constitutionally guaranteed in most countries. In many States, specific domestic laws further govern the exercise of these rights. However, in many instances, domestic legislation in place list grounds additional to those already prescribed by international human rights law and standards in an ambiguous way.

The Special Rapporteur warns against arbitrary interpretations of such grounds for restrictions. He further cautions against an environment in which the enjoyment of these rights is seriously impeded. The legitimate combat against terrorism, and other security considerations such as anti‐money laundering laws and regulations, have been used as a justification for the adoption of a state of emergency or other stricter rules to void the rights to freedom of peaceful assembly and of association. In many instances, emergency regulations have been used to clampdown on freedoms of peaceful assembly, of association and of expression.

Country-specific contexts sometimes extinguish the rights to freedom of peaceful assembly and of association. In situations of armed conflict, individuals who desire to assemble and associate freely, even to address emergency needs or to call for the end of violence, may meet drastic restrictions that may amount to a strict denial of their rights. The context of elections may also heavily impact on the exercise of rights to freedom of peaceful assembly and of association[[7]](#footnote-7) during, before and after the elections. These rights are essential in any the democratic process, both during the election period and between elections.[[8]](#footnote-8)

The Special Rapporteur believes that an electoral process, in which widespread barriers are systematically placed on the exercise of the rights to freedom of peaceful assembly and of association, cannot be said to be either free or fair and, as such, the outcome should not be considered to be the result of “genuine” elections, as required under international law.[[9]](#footnote-9)

During his mission to Georgia, the Special Rapporteur claimed that the mandate holder recognizes the country’s fragile transition to democracy and the security risks that inherently exist in this process. However, the constant blaming of an “external hostile power” does not validate the fact that citizens may have specific and particular grievances that they wish to express in this form, which is often a measure of frustration.[[10]](#footnote-10)

During the mission to South Korea, the Special Rapporteur acknowledged that the Republic of Korea faces special challenges in view of the unsettled relationship with its northern neighbor. Nevertheless, even in those circumstances, human rights should not be sacrificed in the name of security concerns. The rights to freedom of peaceful assembly and of association must remain the rule and restrictions the exception (see A/HRC/20/27, para. 16).

# **Question 2**

# ***How should the term ‘peaceful assembly’ be understood?***

The Special Rapporteur claims 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.[[11]](#footnote-11)

The law only protects assemblies that are not violent and where participants have peaceful intentions, and that shall be presumed (presumption in favour of holding peaceful assemblies).This means that an assembly should be presumed lawful and deemed as not constituting a threat to public order. Such presumption should apply to everyone, without any discrimination, and should be “clearly and explicitly established in the law, enshrined either in constitutions or in laws governing peaceful assemblies” (A/HRC/20/27, para. 26).

The Special Rapporteur believes that unclear legal provisions should be clarified, and that in the absence of clarity, such provisions should be interpreted in favour of those wishing to exercise their right to freedom of peaceful assembly[[12]](#footnote-12).

The fact that the organizers intend to cause hindrance or obstruction to the person or entity against which a demonstration is directed does not mean their intentions are not “peaceful”.[[13]](#footnote-13)

***When is one dealing with an ‘assembly’? Does it require the expression of an idea through a gathering, and if so, what is the hallmark of such an expression of an idea (e.g. does it necessarily entail an appeal to the public opinion)? Does it cover strikes? Or do all gatherings (e.g., also sporting, religious, cultural events, or) qualify as ‘assemblies’?***

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.[[14]](#footnote-14)

An “assembly”, generally understood, is an intentional and temporary gathering in a private or public space for a specific purpose, and can take the form of demonstrations, meetings, strikes, processions, rallies or sit-ins with the purpose of voicing grievances and aspirations or facilitating celebrations[[15]](#footnote-15). Even sporting events, music concerts and other such gatherings can potentially be included. While an assembly is defined as a temporary gathering, this may include long-term demonstrations, including extended sit-ins and “occupy”-style manifestations.[[16]](#footnote-16)

***Does it matter whether the organizers pursue a commercial interest? In order to qualify as an assembly, are there requirements about where should the gathering should take place – in public, private or on-line?***

As it has already been mentioned, an “assembly”, is an intentional and temporary gathering in a private or public space for a specific purpose. Although an assembly has generally been understood as a physical gathering of people, it has been recognized that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online.[[17]](#footnote-17)

The Special Rapporteur has noted the increased use of the Internet, in particular social media, new communication technologies including mobile telephones, 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[[18]](#footnote-18).

Aware of the needs to further develop the study of the exercise of this right on-line, the Special Rapporteur is currently working in the drafting of a report on these rights in the digital age that will be presented to the 41st session of the Human Rights Council in June 2019.

The Special Rapporteur hopes that once this report is presented to the Council, its findings could be considered by Committee in order to provide additional guidance on the exercise of this rights in the digital age.

***Can one person form an assembly? When is an assembly deemed not ‘peaceful’, and fall outside the scope of the protection of the particular right?***

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 behavior”. (European Court of Human Rights, Ziliberberg v. Moldova, application No. 61821/00 (2004)) [[19]](#footnote-19)

Acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly.[[20]](#footnote-20)

Assembly organizers and participants should also not be held responsible and liable for the violent behaviour of others.[[21]](#footnote-21)

***What level of violence (or mere disruption?) is required not to consider it peaceful? To what extent can the violent conduct of certain individuals participating in the assembly be attributed to the group as a whole and render an assembly as a whole not peaceful?***

International human rights norms consider the “peacefulness” of an assembly as the defining characteristic for protection under article 21 of the International Covenant on Civil and Political Rights. The peacefulness of an assembly should be presumed and regard must be given to the intentions of the organizers and the manner in which the assembly is held[[22]](#footnote-22). International law allows for dispersal of a peaceful assembly only in rare cases, for example when it incites discrimination, hostility or violence, in contravention of article 20 of the Covenant.[[23]](#footnote-23)

Further, designating an assembly as unlawful because of the violent actions of a few and subsequently dispersing it fails to take into account that the right to freedom of peaceful assembly belongs to individuals. The rights of peaceful participants cannot be restricted because others are violent.[[24]](#footnote-24)

Importantly, the lawfulness of a demonstration should be assessed first and foremost in terms of its peaceful nature. In this regard, the Special Rapporteur underscores that the peaceful intentions of organizers and participants should be presumed, and warns that sporadic acts of violence by a few individuals does not automatically mean that the assembly as a whole is not peaceful. He welcomes the principle in the protocols that law enforcement officers must distinguish during a protest between peaceful protestors and those breaking the law.[[25]](#footnote-25)

# **Question 3**

# ***Is freedom of assembly an individual or a collective right, or both? Who is the bearer of the right? The participants – individually or collectively? The organizers?***

Resolution 15/21 reaffirms that “everyone has the rights to freedom of peaceful assembly and of association” (emphasis added). This provision must be read jointly with article 2 of the International Covenant on Civil and Political Rights, which stipulates that “each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”(emphasis added)., and article 26 thereof, which guarantees to all individuals equal and effective protection against discrimination on grounds identified in article 2.[[26]](#footnote-26)

Article 21 of the International Covenant on Civil and Political Rights recognizes that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. Importantly, in its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote those rights.[[27]](#footnote-27)

The right to freedom of peaceful assembly is held by each individual participating in an assembly[[28]](#footnote-28) and because this is an individual rights, as mentioned in the previous reply, the fact that it becomes violent should not affect those individuals that are peacefully exercising their right and who are entitled to continue to do so.

However, freedom to organize and participate in public assemblies must be guaranteed to individuals as well as to groups, unregistered associations, legal entities and corporate bodies.[[29]](#footnote-29)

***Does the right cover planning/publication/advertisement of the event, and if so when does this start - before notification or other similar requirements have been met?***

The right to freedom of peaceful assembly includes the right to plan, organize, promote and advertise an assembly in any lawful manner. Any restrictions on such activities should be considered as a prior restriction on the exercise of the right. Restrictions on freedom of association and of expression may also effectively serve as a restriction on freedom of peaceful assembly.[[30]](#footnote-30)

***Does the right cover protection of participants on their way to and from an assembly?***

The Special Rapporteur particularly emphasizes that the right to life and the right to be free from torture or cruel, inhuman or degrading treatment or punishment should be guaranteed by States to all individuals under all circumstances and at all times, including in the context of the exercise of the rights to freedom of association and of peaceful assembly, as prescribed by article 4 of the Covenant.[[31]](#footnote-31)

A more extensive reply to this questions is tackled in Question 4 that develops in depth the obligations by the State to respect and ensure the exercise of the rights to peaceful assembly.

# **Question 4**

# ***Article 2 (1) of the ICCPR requires States to ‘respect and ensure’ the rights in the ICCPR. Article 21 provides that the right of peaceful assembly ‘shall be recognized’. Does this in general terms mean that there is a duty on the State to ‘facilitate’ peaceful assembly, and what does such a duty to ‘facilitate’ entail?***

The Special Rapporteur believes that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities (as explicitly expressed, for example, in the Spanish Constitution), but rather should be at most subjected 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.(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.)

States should plan properly for assemblies, which requires the collection and analysis of information, anticipation of different scenarios and proper risk assessments. Transparent decision-making is central to the process of planning and facilitating assemblies and in ensuring that any action taken by law enforcement is proportionate and necessary. Contingency plans and precautionary measures must also be put in place. Proper planning and preparation requires continuous monitoring of activities and should be adaptable to changing circumstances.[[32]](#footnote-32)

The State’s obligation to facilitate includes the responsibility to provide basic services, including traffic management, medical assistance and clean-up services. Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.[[33]](#footnote-33)

International law requires that States respect and ensure the rights of all individuals. The obligation to respect rights means that States must refrain from restricting the exercise of the rights where it is not expressly allowed under international law. The obligation to ensure is a positive duty that requires States both to fulfil and to protect rights. The protection of rights requires that positive measures be taken to prevent actions by non-State actors that could interfere with the exercise of the right during, before and after the peaceful assembly. The fulfilment of rights requires States to create, facilitate or provide the necessary conditions for the enjoyment of rights.[[34]](#footnote-34)

The Special Rapporteur has recommended that States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Wherever possible, law enforcement authorities should not resort to force during peaceful assemblies and ensure that, “where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force” (Council resolution 19/35, para. 6).[[35]](#footnote-35)

In addition, the Special Rapporteur has recommended that States should create an enabling environment in which civil society can access relevant information, participate in decision-making processes and express opinions freely, including through peaceful assemblies, without threats of prosecution or other harm for legitimate opposition; ensure that cases of violations of human rights, including peaceful assembly and association rights, are promptly and impartially investigated and those responsible for the violations are held to account;[[36]](#footnote-36)

The Special Rapporteur has stressed that States should ensure the provision of adequate security and public order management in accordance with international human rights law and standards to preclude the need for private military and security companies to fill this gap.[[37]](#footnote-37)

States also bear the primary responsibility for promoting and protecting peaceful assembly and association rights. They must implement and strengthen mechanisms that enable them to discharge this duty. One major problem with States’ current legal frameworks, however, is a lack of proper enforcement mechanisms at both the domestic and international levels. Without such mechanisms, accountability will be, at best, sporadic and irregular.[[38]](#footnote-38)

***Does it mean that, while people exercise this right, the focus of law enforcement officials should be primarily on protecting the rights of all concerned rather than upholding law and order? (Are States thus required to show a certain level of tolerance to conduct when engaged in as part of peaceful assembly, and not meet it with the same force of the law as it would otherwise do?)***

A primary function of law enforcement, in addition to the obligation to facilitate, is protecting the safety and rights of those who participate in assemblies, as well as monitors and bystanders.[[39]](#footnote-39)

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. 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).

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 cannons) 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.[[40]](#footnote-40)

***How should the obligation to allow assemblies to take place within ‘sight and sound’ of its target audience be interpreted?***

Organizers have the right to demonstrate “within sight and sound” of their target audience or target object, and authorities have a duty to facilitate the assembly at a specific location.

The choice of the venue or location of an assembly by the organizers is an integral part of the right to freedom of peaceful assembly. In many instances the location where an assembly takes part is an important part of its message; a protest demanding accountability for a gas explosion, for example, may be held at the site and exact time of the explosion. Likewise, public areas around iconic buildings are a logical place for to convey a message with regard to institutions housed in these buildings.

# **Question 5**

# ***More specifically, what are the (negative and positive) obligations placed by the right of peaceful assembly on the State? How should the right be respected by the State (e.g. through the adoption of laws providing for and regulating its exercise in accordance with international law)? How should it be protected?***

Positive obligations:

As mentioned before, the positive obligation of the State to ensure rights requires that authorities facilitate assemblies. States should plan properly for assemblies, which requires the collection and analysis of information, anticipation of different scenarios and proper risk assessments. Transparent decision-making is central to the process of planning and facilitating assemblies and in ensuring that any action taken by law enforcement is proportionate and necessary. Contingency plans and precautionary measures must also be put in place. Proper planning and preparation requires continuous monitoring of activities and should be adaptable to changing circumstances.[[41]](#footnote-41)

Negative obligations:

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.”[[42]](#footnote-42)

Example: The Special Rapporteur 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”. 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”. 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”.

It is important to reiterate in this question that, international law requires that States respect and ensure the rights of all individuals. The obligation to respect rights means that States must refrain from restricting the exercise of the rights where it is not expressly allowed under international law. The obligation to ensure is a positive duty that requires States both to fulfil and to protect rights. The protection of rights requires that positive measures be taken to prevent actions by non-State actors that could interfere with their exercise. The fulfilment of rights requires States to create, facilitate or provide the necessary conditions for the enjoyment of rights.[[43]](#footnote-43)

***To what extent does the State have an obligation to protect those engaged in peaceful assembly from interference by other members of the public? And should counter-demonstrations be protected to the same extent?***

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.[[44]](#footnote-44)

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.[[45]](#footnote-45) However, where a counter-demonstration has been organized with the intention of interfering with the rights of others to lawfully assemble, the counter-demonstration will fall within the ambit of article 5 of the International Covenant on Civil and Political Rights, and the protections afforded in respect of the right to freedom of peaceful assembly will not apply.[[46]](#footnote-46)

As stated before, acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly (para. 25).[[47]](#footnote-47)

***How should the obligation on States to take precautionary measures to prevent violations of rights be understood in this context (for example in the context of preventing and reducing violence)?***

As mentioned, the positive obligation of the State to ensure rights requires that authorities facilitate assemblies. States should plan properly for assemblies, which requires the collection and analysis of information, anticipation of different scenarios and proper risk assessments. Contingency plans and precautionary measures must also be put in place. Proper planning and preparation requires continuous monitoring of activities and should be adaptable to changing circumstances.[[48]](#footnote-48)

The Special Rapporteur considers pre-event planning, including risk assessment, by law enforcement officials, together with organizers of peaceful assemblies and, if possible, local authorities, as a good practice which may contribute to the success of the assembly. However, participation of organizers in such planning should never be made compulsory. Possible issues for discussion include an estimate of the number of participants expected; itinerary of the assembly, if it is not static; specific needs of persons with disabilities and groups at risk, such as women, indigenous peoples and groups who, due to their sexual orientation and/or gender identity may be in need of greater protection by the authorities; need to deploy properly trained and clearly identified stewards whose role is to provide assistance to organizers by, inter alia, informing and orienting the public during the event, but who should not be used to palliate deficiencies in the security apparatus.

When organizers cannot be identified due to the nature of certain assemblies (such as those convened through use of new commination technologies such as social media or other internet platforms), the authorities must undertake such planning and be prepared to the same extent.

Law enforcement authorities should be prepared and properly trained to handle the presence of agents provocateurs and counter-demonstrators aiming to disrupt or disperse the assembly, and to extract them from the assembly or contain them effectively. The authorities should also be prepared to handle simultaneous demonstrations, which should be facilitated and protected when possible. Fundamentally, law enforcement authorities should always be forthcoming and genuinely cooperate with organizers, bearing in mind their duty to facilitate and protect peaceful assemblies.[[49]](#footnote-49)

***Is there an obligation on the part of the authorities to attempt to engage with assembly organizers and participants prior to the holding of the assembly? Are organizers required to engage with the authorities?***

The proper facilitation of assemblies also benefits from effective communication and collaboration among all relevant parties[[50]](#footnote-50). Open dialogue between authorities (including the authority responsible for receiving notices and law enforcement officials) and, where identifiable, assembly organizers before, during and after an assembly enables a protective and facilitative approach to be taken, helping to defuse tension and prevent escalation. Law enforcement agencies and officials should take all reasonable steps to communicate with assembly organizers and/or participants regarding the policing operation and any safety or security measures. Communication is not limited to verbal communication and law enforcement officials must be trained on the possible impact of any indirect communication that may be perceived by organizers and participants as intimidation, for example, the presence or use of certain equipment and the body language of officials. Effective communication depends on a relationship of trust.

Law enforcement authorities should continually work on strategies to build trust with the communities they serve. The demographic makeup of law enforcement authroties should be representative of the whole community. There should be a free flow of information before and throughout assemblies, and all relevant parties should be informed of any changes in context and circumstance. Communication and dialogue by assembly organizers and participants must be entirely voluntary, and must not formally or informally impose on organizers an obligation to negotiate the time, place or manner of the assembly with the authorities. Such requirements would be tantamount to restricting the planned assembly.[[51]](#footnote-51)

It is worth emphasizing that peaceful protests often take place when scope for effective engagement with the authorities or businesses is otherwise limited.[[52]](#footnote-52)

It is a good practice for assembly organizers to take reasonable steps to ensure the peacefulness of an assembly, including by liaising with law enforcement authorities at all stages of planning and execution of the event, appointing assembly stewards, complying with legal requirements etc. However, organizers should not incur liability for the unlawful or violent acts of others.[[53]](#footnote-53)

Parades are generally largely peaceful and well facilitated by the police. The increasing use of dialogue and negotiation between local authorities and police on the one hand, and organizers of parades and protests on the other, in order to ensure that these events take place with minimal difficulty, is commendable.[[54]](#footnote-54)

***Is there a special role for NHRIs in this regard? And other stakeholders (such as local governments)?***

National human rights institutions complying with the Paris Principles should play a role in fostering and monitoring the implementation of the rights to freedom of peaceful assembly and of association and in receiving and investigating allegations of related human rights violations and abuses.[[55]](#footnote-55)

National human rights institutions also play an important role when receiving and investigating allegations of human rights violations and abuses as a result of peaceful assemblies (e.g. Malaysia and Portugal). The work of these institutions should be respected and facilitated by the authorities. Where the rights to freedom of peaceful assembly and of association are unduly restricted, the victim(s) should have the rights to obtain redress and to fair and adequate compensation.

The Special Rapporteur recommends that national human rights institutions consider increased investigation, research, monitoring and documentation of violations of peaceful assembly and association rights and providing avenues for redress where feasible.[[56]](#footnote-56)

The Special Rapporteur finds particularly helpful the practice of inviting non-governmental organizations to monitor protests and the policing around them, including by inviting the monitors to the command control room. For instance, he considers the invitation from the London Metropolitan Police to Liberty, an independent human rights organization, to act as an independent observer during the TUC march in London in 2010, to be a good practice. Independent monitoring is crucial for law enforcement authorities, giving them an opportunity to genuinely learn from their mistakes.[[57]](#footnote-57)

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).(A/62/225, para. 91.) Such defenders include members of civil society organizations, journalists, “citizen journalists”, bloggers and representatives of national human rights institutions. 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.[[58]](#footnote-58)

**Question 6**

***When and how may the right of peaceful assembly be limited? Are the limitations affected by the modalities of the assembly (e.g. whether they take place in the open or within a building, whether they are stationary gatherings or marches)?***

The Special Rapporteur recalls that the exercise of the right to freedom of peaceful assembly can be subject to certain restrictions only, “which are prescribed by 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.”(Human Rights Council resolution 15/21.) In this connection, he stresses once again that freedom is to be considered the rule and its restriction the exception.[[59]](#footnote-59)

The Special Rapporteur emphasizes that only “certain” restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception. He refers to general comment No. 27 (1999) of the Human Rights Committee on freedom of movement: “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”. As a result, when States would like to restrict these rights, all the above conditions must be met. Any restrictions must therefore be motivated by one of the above limited interests, have a legal basis (be “prescribed by law”, which implies that the law must be accessible and its provisions must be formulated with sufficient precision) and be “necessary in a democratic society”.

In addition, only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 of the Covenant on Civil and Political Rights) or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (art. 5) should be deemed unlawful.[[60]](#footnote-60)

***Is it correct to say there is a ‘presumption’ under the Covenant in favor of allowing peaceful assemblies, and the onus is on those wishing to restrict such assemblies to justify such limitations?***

Fundamentally, the Special Rapporteur considers as a best practice the presumption in favor of holding peaceful assemblies, as stressed by the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly and meaning that assemblies should be deemed de facto lawful and as not constituting a threat to public order.[[61]](#footnote-61) Such presumption should apply to everyone, without any discrimination, and should be “clearly and explicitly established in the law, enshrined either in constitutions or in laws governing peaceful assemblies”[[62]](#footnote-62). The Special Rapporteur believes that unclear legal provisions should be clarified, and that in the absence of clarity, such provisions should be interpreted in favor of those wishing to exercise their right to freedom of peaceful assembly.[[63]](#footnote-63)

He further reminds that whenever authorities decide to restrict an assembly, they should provide assembly organizers, in writing, with “timely and fulsome reasons” which should satisfy the strict test of necessity and proportionality of the restrictions(s) imposed on the assembly pursuant to legitimate aims.(A/HRC/20/27, para. 42.)[[64]](#footnote-64)

***How should the procedural requirement for limitations on the right in sentence two of article 21 (that limitations can only be imposed ‘by law’) and the substantive requirements (this can be done only where it is necessary to protect national security, etc.) be understood?***

Any restrictions must have a legal basis, meaning that it should be “prescribed by law”, which implies that the law must be accessible and its provisions must be formulated with sufficient precision and be “necessary in a democratic society”. When such a pressing social need arises, States have then to ensure that any restrictive measures fall within the limit of what is acceptable in a “democratic society”. In that regard, longstanding jurisprudence asserts that democratic societies exist only where “pluralism, tolerance and broadmindedness” are in place[[65]](#footnote-65). Hence, States cannot undermine the very existence of these attributes when restricting these rights.

Furthermore, the Special Rapporteur refers to general comment No. 31 (2004) of the Human Rights Committee on the nature of the general legal obligation imposed on States parties to the Covenant, which provides that “where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights” (para. 6).[[66]](#footnote-66)

To satisfy the requirement of lawfulness, any restrictions imposed must have a legitimate and formal basis in law (the legality principle), as must the mandate and powers of the restricting authority. The law itself must be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and also foresee the likely consequences of any such breach. To conform to the principle of proportionality, any restriction must be appropriate to achieve its protective function.

To meet the necessity requirement it must also be the least intrusive instrument among those which might achieve the desired result. It must be narrowly tailored to the specific aims and concerns of the authorities, and take into account an analysis of the full range of rights involved in the proposed assembly. In determining the least intrusive instrument to achieve the desired result, authorities should consider a range of measures, with prohibition a last resort. To this end, blanket bans, including bans on the exercise of the right entirely or on any exercise of the right in specific places or at particular times, are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.[[67]](#footnote-67)

The Special Rapporteur is particularly troubled by the imposition of blanket bans in many States, such as Azerbaijan and Bahrain, typically in the interests of national security, public safety or public order. He firmly believes that such blanket bans, are intrinsically disproportionate and discriminatory measures as they impact on all citizens willing to exercise their right to freedom of peaceful assembly. States have also resorted to preemptive measures to quash peaceful assemblies, including by preventing participants from reaching assembly points, as in Sri Lanka and Myanmar[[68]](#footnote-68) and most recently in France.

When a State invokes national security and protection of public order to restrict an assembly, it must prove the precise nature of the threat and the specific risks posed. It is not sufficient for the State to refer generally to the security situation. National, political or government interest is not synonymous with national security or public order.[[69]](#footnote-69)

The Special Rapporteur recommends that laws governing State conduct in relation to assemblies should be drafted unambiguously and should incorporate legality, necessity and proportionality tests. Laws should state clearly the body with authority and responsibility for receiving and responding to notifications, which should be independent of undue interference. This body should not be granted excessive discretion: the criteria upon which it can impose restrictions should be publicly available and must accord with international human rights law and standards. Proposed restrictions should be put in writing, justified and communicated to the organizers, including the justification for the restriction, allowing an opportunity for the organizers to make submissions and to respond to any proposed restriction. Proposed restrictions should be communicated in a time frame prescribed by law, allowing sufficient time for an appeal — or urgent interim relief — to be completed before the proposed time of the assembly. Laws should provide access to administrative remedies. However, exhaustion of administrative remedies should not be a prerequisite for an organizer to seek judicial review.[[70]](#footnote-70)

**What is their relationship to other articles of the Covenant, including article 22?**

 In his first thematic report to the Human Rights Council, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association clarified that an “association” refers to any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests[[71]](#footnote-71).

Associations may take a variety of diverse forms, including, but not limited to, civil society organizations, clubs, cooperatives, non-governmental organizations (NGOs), religious associations, political parties, trade unions, foundations or online associations[[72]](#footnote-72). They may thus be formed for a variety of purposes: personal, cultural, political or otherwise. The key qualification is the freedom to function in unison towards some kind of joint goal.

 Associations, in all its forms, are able to express and exercise their activities as they deem appropriate through the exercise of the right to freedom to peaceful assembly. These rights are closely interlinked as both constitute enabling rights that are essential for societies and in the promotion of other human rights.

***How should such limitations be enforced – is there e.g. a role for criminal sanctions, and if so when? What are the alternatives? Who can be held criminally responsible for violent conduct of individuals or groups that participate? What does an ‘effective remedy’ mean in time sensitive contexts?***

Assembly organizers and participants should also not be held responsible and liable for the violent behaviour of others.[[73]](#footnote-73)

The Special Rapporteur has expressed its concern in relation the criminalization of persons who exercise the right to peacefully assemble identified this as one of the global trends restricting the exercise of this right.[[74]](#footnote-74)

Criminalization refers to administrative or criminal measures taken with the aim of effectively sanctioning organizers or participants or with the objective of harassing, persecuting and/or intimidating them while exercising this right.

A number of international courts and mechanisms have made it clear that the application of criminal or administrative sanctions to organizers of or participants in peaceful assemblies warrants particular scrutiny; in principle there should be no threat of sanctions for participation in assemblies. This is true all the more of the imposition of prison sentences.

In relation to remedy, the State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violation and the harm suffered, and should include elements of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as well as access to relevant information concerning violations and reparation mechanisms.[[75]](#footnote-75)

The Special Rapporteur recommends that States should ensure that those who violate and/or abuse the rights of individuals to freedom of association and of peaceful assembly are held fully accountable by an independent and democratic oversight body and by the courts of law.[[76]](#footnote-76)

***What are the safeguards that should be in place to establish whether limitations on peaceful assemblies are permissible (e.g. judicial review)? How can transparency of decision-making in relation to assemblies be ensured?***

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”.[[77]](#footnote-77) 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. [[78]](#footnote-78)

The decision of the regulatory authority and of the appeal court should be published for the purposes of transparency and fairness, possibly on a specific website.[[79]](#footnote-79)

The onus of justifying a limitation rests with the authority. If any restriction is imposed there should be an option for organizers to seek judicial review and, where relevant, administrative review, that is prompt, competent, independent and impartial.[[80]](#footnote-80)

The Special Rapporteur recommends that States should ensure that a detailed and timely written explanation for the imposition of any restriction is provided, and that said restriction can be subject to an independent, impartial and prompt judicial review.[[81]](#footnote-81)

**Question 7**

***What is the position as far as organizer accountability is concerned? Can the organizers be required to cover police costs, provide assurances in advance as far as reparations for damages are concerned, cleaning up services, medical services, etc.? Do particular obligations arise for organizers where participants in an assembly (including counter-demonstrations) intentionally advocate hatred, seek to intimidate others or call for or use force?***

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)”. He is informed that, in Austria, there are no fees to be paid for the protection of assemblies. 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”. 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. [[82]](#footnote-82)

The principle of individual liability of participants should be upheld, notably due to the presumption of peacefulness of the assembly. The Special Rapporteur is concerned that organizers have sometimes been brought to court for the violent behavior of others, as in Malaysia. He is similarly concerned about legal provisions criminalizing organizers for the violent conduct of others, as in the Canton of Geneva, Switzerland.[[83]](#footnote-83)

While organizers should make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behavior of others. To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights. No person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest.[[84]](#footnote-84)

***How should concealment of their faces by participants be dealt with?***

Numerous jurisdictions have in recent years banned peaceful protesters from covering their faces during demonstrations, motivated by fears that demonstrators who wear masks or hoods could engage in violence and escape punishment due to their concealed identities. Besides the fact that violent acts during peaceful demonstrations are already illegal under the norms of various jurisdiction, the Special Rapporteur is concerned that bans on face coverings during assemblies are in some circumstances used to target particular groups and improperly curtail their right to freedom of peaceful assembly.[[85]](#footnote-85)

There may be legitimate and non-criminal reasons for wearing a mask or face covering during a demonstration, including fear of retribution. For example, in Egypt, article 6 of the 2013 law on protests and demonstrations prohibits the wearing of a mask to hide the face during any assembly. That provision contains no exceptions and could be used to discriminate against women who wear the niqab, effectively preventing them from participating in public meetings or protests.

Such laws may also be used against individuals with medical disabilities who wear face masks for medical purposes. Certain peaceful protest movements in the Arab world, Western Europe, North America and elsewhere have adopted the use of the Guy Fawkes mask as an emblem. The mask is particularly popular among youth and student protest movements. The donning of this mask can be as much a political statement — a way of identifying with one’s fellow demonstrators and a worldwide movement — as it is an attempt to conceal identity.[[86]](#footnote-86)

# **Question 8**

# ***Should those wishing to exercise this right be required to apply for authorization; or merely be required to notify the authorities; and if the latter, what form should the notification take (how onerous can expectations of notification be: how long in advance; does this apply to spontaneous assemblies (and how are they to be defined); etc.)?***

The Special Rapporteur believes that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities, 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.[[87]](#footnote-87) Such a notification should be subject to a proportionality assessment, not unduly bureaucratic 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.(Guidelines on Freedom of Peaceful Assembly, p. 63.) 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 anyone who, inter alia, does not request an authorization to demonstrate or does not respect the content of the authorization.(As of May 2012, the law is the subject of an appeal before the Swiss Federal Tribunal)[[88]](#footnote-88)

Furthermore, the Special Rapporteur is of the opinion that notification should be required only for large assemblies or for assemblies where a certain degree of disruption is anticipated.[[89]](#footnote-89)

In his view, such notification should be submitted a maximum of, for example, 48 hours prior to the day the assembly is planned to take place. The organizers should send a single notification to a designated primary authority, and not to multiple authorities (e.g. one or several municipal authorities, as is sometimes done in the case of parades, and/or law enforcement agencies). The primary authority should communicate the details of the notification to all relevant bodies.

In this regard the Special Rapporteur believes that the organizers should be able to notify the designated primary authority of the holding of a peaceful assembly in the simplest and fastest way, by filling, for instance, a clear and concise form, available in the main local language(s) spoken in the country, preferably online to avoid uncertainties and possible delays in postage. The notification should merely contain information regarding the date, time, duration and location or itinerary of the assembly, and the name, address and contact details of the organizer.

By contrast, as in the view of the OSCE/ODIHR Panel of Experts, a notification should be considered as unduly bureaucratic if any of the following requirements is imposed on the organizers: that there be more than one named organizer; that only registered organizations are considered as legitimate organizers; that formal identity documents, such as passports or identity cards, be produced; that identification details of others involved in the event, such as stewards be provided; that reasons for holding an assembly, bearing in mind the principle of non-discrimination, be given; and that the exact number of participants, which is difficult to predict, be given. In this connection, the authorities should not punish organizers if the number of participants does not match the anticipated number, as stipulated by domestic legislation (as has occurred in the Russian Federation).[[90]](#footnote-90)

The Special Rapporteur further echoes the views of the Panel of Experts that the authorities should be flexible in cases of (a) late notification, if there is a good reason; (b) incorrect completion of form; or (c) failure to provide all necessary information. The notification timeline should not restart from the beginning and there should be some flexible means of correcting minor omissions or errors. Another inappropriate requirement attached to the notification process is informally or formally imposing on the organizers the expectation to negotiate the time and place of the assembly with the authorities. Such requirement would be tantamount to restricting the planned assembly and would need to pass the strict test of necessity and proportionality, as defined in article 21 of the Covenant, which is applicable to restrictions. The Special Rapporteur also warns against authorities proposing an alternative time and place for an assembly, when processing a notification, as this would also be imposing restrictions on the right to freedom of peaceful assembly and should satisfy the aforementioned test.[[91]](#footnote-91)

The Special Rapporteur is also of the opinion that the notification procedure should at all times be free of charge so as not to financially deter organizers from exercising their right to freedom of peaceful assembly. Similarly, the cost of protecting and facilitating the assembly (such as deploying security barriers, medical services or temporary sanitary facilities) should not be borne by the organizers. Once the organizers have notified the designated primary authority of their intention to hold an assembly, a receipt acknowledging that timely notification has been submitted should be provided in an expeditious manner. Should the organizers not hear from the authority prior to the designated time for holding the assembly, it should be assumed that said assembly does not present any problem. The Special Rapporteur warns against any possible abuse of the receipt system.[[92]](#footnote-92)

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. 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”.[[93]](#footnote-93) “Special circumstances” refer to cases when “an immediate response to a current event is warranted in the form of a demonstration”.[[94]](#footnote-94)

The Special Rapporteur has recommended that spontaneous assemblies should be recognized in law, and exempted from prior notification. Simultaneous assemblies should be allowed, protected and facilitated, whenever possible.[[95]](#footnote-95)

The aforementioned presumption further means that, in a free and democratic society, no authorization should be required to assemble peacefully. In this regard, the Special Rapporteur stresses again that the exercise of the right to freedom of peaceful assembly, should be “governed at most by a regime of prior notification whose rationale is to allow State authorities to facilitate this exercise and to take measures to protect public safety and order and the rights and freedoms of others”.[[96]](#footnote-96)

***Is a system of voluntary notification workable? Are there international standards for establishing which assemblies need to be free from all requirements of notification and authorization; which the former and which the latter?***

Freedom of peaceful assembly is a fundamental right, and should be enjoyed without restriction to the greatest extent possible. Only those restrictions which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others, and are lawful, necessary, and proportionate to the aim pursued, may be applied. Any restrictions are to be the exception rather than the norm, and must not impair the essence of the right.[[97]](#footnote-97)

The Special Rapporteur stresses again that the exercise of the right to freedom of peaceful assembly, should be “governed at most by a regime of prior notification whose rationale is to allow State authorities to facilitate this exercise and to take measures to protect public safety and order and the rights and freedoms of others”[[98]](#footnote-98). The notable exception to this principle is that of spontaneous peaceful assemblies where organizers are unable to comply with the requisite notification requirements or where there is no existing or identifiable organizer. Fundamentally, the Special Rapporteur reiterates 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” (para. 29).[[99]](#footnote-99)

As mentioned, international human rights law favors a prior notification system rather than a permission system for holding assemblies. Notification is not the same as permission; its purpose is to allow the authorities to facilitate assemblies and to take measures to protect protesters and the rights and freedoms of others, and ensure public safety and order. Moreover, international standards dictate that spontaneous assemblies should be exempted from notification requirements and that organizers of assemblies should never be sanctioned for failure to provide notification[[100]](#footnote-100). That risks turning the right into a privilege, where the exercise of fundamental freedoms is dependent on State discretion.[[101]](#footnote-101)

The Inter-American Commission has indicated that “The right to demonstrate should be permitted even when there is no statutory regulation, and one must not demand of those who want to demonstrate that they obtain authorization to do so. This presumption should be clearly established in the states’ legal systems”.[[102]](#footnote-102)

**Question 9**

***What sort of limitations may be placed on assemblies as far as their form (e.g. place, manner and time) or their contents (e.g. promotion of violence) is concerned?***

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.”

The Special Rapporteur is mindful of States’ obligation to guarantee law and order, but restrictions on peaceful assembly in relation to its “time, place and manner” should be limited to the extent that such restrictions meet the aforementioned strict test of necessity and proportionality. Any restriction imposed on the nature or content of the message the organizers and participants want to convey, especially in relation to criticism of Government policies, should be proscribed, unless the message constitutes “incitement to discrimination, hostility or violence”, in conformity with article 20 of the Covenant. In this connection, he stresses the recommendation that he has already put forward to States to “provide individuals exercising their rights to freedom of peaceful assembly and of association with the protection offered by the right to freedom of expression”.(OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, para. 99 and 101.)[[103]](#footnote-103)

“Time, place and manner” restrictions refer to prior restrictions regarding when, where and how an assembly may be conducted. Such restrictions should never be used to undermine the message or expressive value of an assembly or to dissuade the exercise of the right to freedom of assembly.[[104]](#footnote-104)

In addition, only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 of the Covenant on Civil and Political Rights) or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (art. 5) should be deemed unlawful.[[105]](#footnote-105)

International human rights law affirms the right of individuals to express their opinions, even if these opinions are unpopular or in opposition to government views or policies. The right to freedom of peaceful assembly is an essential vehicle for people to express their opinions, and this right cannot be limited based solely upon an assembly’s message or content. [[106]](#footnote-106)

Participants in assemblies are free to choose and express the content of their message. Restrictions on the content of assemblies may be imposed only in conformity with the legitimate limitations on rights outlined above, for example, where the message advocates national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Where a content-based restriction is justified, authorities should take the least intrusive and restrictive measures to address the issue.[[107]](#footnote-107)

***Are there circumstances under which all peaceful assemblies may be prohibited for a certain period in connection with states of emergencies, or independently of states of emergency?***

The Special Rapporteur recalls that, according to the Human Rights Committee, during a state of emergency, the rights to freedom of peaceful assembly and of association shall not be derogated since “the possibility of restricting certain Covenant rights under the terms of, for instance … freedom of assembly is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation”.(General comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para.)[[108]](#footnote-108)

The legitimate combat against terrorism, and other security considerations, has been used as a justification for the adoption of a state of emergency or other stricter rules to void the rights to freedom of peaceful assembly and of association. In many instances, emergency regulations have been used to clampdown on freedoms of peaceful assembly, of association and of expression. On different occasions, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed in a report to the General Assembly that “States should not need to resort to derogation measures in the area of freedom of assembly and association. Instead, limitation measures, as provided for in ICCPR, are sufficient in an effective fight against terrorism” (A/61/267, para. 53). Country-specific contexts sometimes extinguish the rights to freedom of peaceful assembly and of association. In situations of armed conflict, individuals who desire to assemble and associate freely, even to address emergency needs or to call for the end of violence, may meet drastic restrictions that may amount to a strict denial of their rights. The context of elections may also heavily impact on the rights to freedom of peaceful assembly and of association. This is particularly the case when assemblies are systematically prohibited or when individuals active in associations promoting transparent and fair electoral processes and defending democratic principles are subject to harassment and intimidation for their civic activism. [[109]](#footnote-109)

When a State invokes national security and protection of public order to restrict an assembly, it must prove the precise nature of the threat and the specific risks posed. It is not sufficient for the State to refer generally to the security situation. National, political or government interest is not synonymous with national security or public order.[[110]](#footnote-110)

***Can all assemblies in particular places (e.g. ‘neutral zones’ around parliaments, courts or monuments) or during a specific time be prohibited?***

Access to public space means concretely that organizers and participants should be able to use public streets, roads and squares to conduct (static or moving) peaceful assemblies. The Special Rapporteur believes that spaces in the vicinity of iconic buildings such as presidential palaces, parliaments or memorials should also be considered public space, and peaceful assemblies should be allowed to take place in those locations. In this regard, the imposition of restrictions on “time, place and manner” should meet the aforementioned strict test of necessity and proportionality. In Kenya, protesters have been temporarily prohibited from gathering around the Supreme Court as they awaited a decision, as well as from other public places.[[111]](#footnote-111)

In this connection, the IACHR stressed 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”.(OAS/IACHR, Report on Citizen Security and Human Rights, 31 December 2009 (OEA/Ser.L/V/II), para. 193.) An assembly causes only a temporary obstruction to traffic, that is, a temporary interference with the rights and activities of others. The Special Rapporteur finds it troubling that in some States, street protests are forbidden under domestic legislation (Malaysia); it is prohibited for street marches to impede the movement of traffic and pedestrians (Belarus); mass gatherings are prohibited and subject to a heavy fine as they may, inter alia, disrupt traffic and transportation (Russian Federation); application to hold a peaceful assembly to celebrate International Peace Day was rejected by the authorities, allegedly because it would have, inter alia, disrupted traffic (Myanmar); women human rights defenders have repeatedly been arrested and detained for disrupting traffic during peaceful street marches (Zimbabwe).[[112]](#footnote-112)

# **Question 10**

# ***To what extent have general rules and good practices emerged on the facilitation of assemblies, to prevent an escalation of the situation, for example by not taking measures that might increase tensions, requiring law enforcement officials to be identifiable, etc.?***

The Special Rapporteur considers as best practice legislation which provides for criminal and disciplinary sanctions against those who interfere with or violently disperse public assemblies through excessive use of force (e.g. Bulgaria, Burkina Faso, Colombia, Cote d’Ivoire, Cuba, Estonia, Japan, Kyrgyzstan, Portugal, Republic of Moldova, Serbia and Spain).

More specifically, in Colombia, according to the law, the excessive or arbitrary use of force against peaceful demonstrators constitutes a grave breach, under the disciplinary regime for the national police. Similarly, in Portugal, a decree-law foresees sanctions against authorities who hinder the right to freedom of peaceful assembly, and article 382 of Criminal Code sets the applicable sanctions in relation to the abuse of power. In this connection, the Special Rapporteur stresses the importance of police officers wearing visible identification numbers on their uniforms. As noted by the Hungarian Office of the Commissioner for Fundamental Rights, during a protest that was violently repressed in the country, many police officers could not be identified because they did not wear such identification number.[[113]](#footnote-113)

In his most recent visit to Armenia, the Special Rapporteur lauded the transition of government as a result of the so-called “velvet revolution” in which restraint from the law enforcement authorities allowed the space for masses of peaceful protesters well-versed on their rights and obligations successfully achieved change[[114]](#footnote-114). A detailed report will be presented to the 41st session of the Human Rights Council on June 2019.

***How should the division of labor between the police and marshals be determined?***

As a general rule, the military should not be used to police assemblies. In exceptional circumstances where this becomes necessary, the military must be subordinate to civilian authorities. The military must also be fully trained in, adopt and be bound by international human rights law and principles, as well as any law enforcement policy, guidelines and ethics, and be provided with any other training and equipment necessary. In order to comply with these requirements, the State must put measures in place far in advance, should such a situation arise later.[[115]](#footnote-115)

***What is the role of undercover policing?***

The collection of accurate information by law enforcement may be useful to the proper management of assemblies, enabling law enforcement to discharge their responsibilities to prepare for and facilitate peaceful assemblies. The collection and processing of personal information, such as through recording devices, closed-circuit television and undercover policing, must comply with protections against arbitrary or unlawful interference with privacy.[[116]](#footnote-116)

The use of undercover officers to collect intelligence relating to assemblies is problematic. It is highly intrusive and carries a high risk of rights violations and therefore should not be allowed unless reasonable grounds exist to suspect that a serious criminal act is likely to be committed. Authorities should consider whether the proposed undercover activity is the only way to secure the required information, and whether the value of the information justifies the intrusion. This should take into account the impact on the rights of all those affected, not only the targets.[[117]](#footnote-117)

# **Question 11**

# ***What are the rules as far as the use of coercive measures against those engaged in assemblies is concerned, also if they turn violent? This includes detention, arrest and the use of force (articles 6, 7 and 9 of the ICCPR). How should the requirements of legality, precaution, necessity and proportionality in the context of the use of force be understood?***

States and their law enforcement agencies and officials are obligated under international law to respect and protect, without discrimination, the rights of all those who participate in assemblies, as well as monitors and bystanders. The normative framework governing the use of force includes the principles of legality, precaution, necessity, proportionality and accountability.

The principle of legality requires that States develop a domestic legal framework for the use of force, especially potentially lethal force, that complies with international standards (see A/HRC/26/36, para. 56). The normative framework should specifically restrict the use of weapons and tactics during assemblies, including protests, and include a formal approval and deployment process for weaponry and equipment.[[118]](#footnote-118)

The principle of precaution requires that all feasible steps be taken in planning, preparing, and conducting an operation related to an assembly to avoid the use of force or, where force is unavoidable, to minimize its harmful consequences. Even if the use of force in a particular situation complies with the requirements of necessity and proportionality, but the need to use force could reasonably have been prevented from arising in the first place, a State may be held accountable for a failure to take due precautionary measures. Training should include techniques of crowd facilitation and management consonant with the legal framework governing assemblies.(Principle 20 of the Basic Principles, and OSCE/ODIHR, *Guidelines*, para. 147.) States must ensure that their law enforcement officials are periodically trained in and tested on the lawful use of force, and on the use of the weapons with which they are equipped.[[119]](#footnote-119)

The use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least harmful means available), which is a factual cause and effect assessment. Any force used should be targeted at individuals using violence or to avert an imminent threat. The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgment that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit.[[120]](#footnote-120)

The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgment that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit.[[121]](#footnote-121)

The principles of necessity and proportionality apply to the use of all force, including potentially lethal force. Specific rules apply to the use of firearms for law enforcement, also during assemblies.(Principle 9 of the Basic Principles.) Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary).[[122]](#footnote-122)

On the basis of a risk assessment, equipment for law enforcement officials deployed during assemblies should include both appropriate personal protective equipment and appropriate less-lethal weapons. Weapons and tactics should allow for a graduated response and de-escalation of tensions. Accordingly, the provision of a firearm to law enforcement officials with no less-lethal alternative other than a baton is unacceptable. Where necessary, officials must be appropriately protected with equipment, such as shields, helmets and stab- and/or bulletproof jackets, with a view to decreasing the need for any use of weapons by law enforcement. Equipment and weapons that cannot achieve a legitimate law enforcement objective or which present unwarranted risks, particularly in the circumstances of an assembly, should not be authorized for use.[[123]](#footnote-123)

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”.(Inter-American Court of Human Rights judgment, Caracazo v. Venezuela (2002), para. 127.)

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”.(Report on the Situation of Human Rights Defenders in the Americas, para. 68.)

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. 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.[[124]](#footnote-124)

The Special Rapporteur reiterates that the guarantees provided by international human rights standards relate only to assemblies that are peaceful (see A/HRC/20/27, para. 25). When violent incidents occur within otherwise peaceful assemblies, authorities have a duty to distinguish between peaceful and non-peaceful demonstrators, take measures to de-escalate tensions and hold the violent individuals — not the organizers — to account for their actions. The potential for violence is not an excuse to interfere with or disperse otherwise peaceful assemblies. This principle is all the more important because violence in the course of peaceful protests may be instigated to justify the dispersal of a protest.[[125]](#footnote-125)

Use of the tactic of stop-and-search by law enforcement against individuals organizing or participating in an assembly may affect the rights to liberty and bodily security, as well as privacy. Stop-and-search must not be arbitrary and must not violate the principle of non-discrimination. It must be authorized by law, necessary and proportionate. The mere fact that an individual is participating in a peaceful assembly does not constitute reasonable grounds for conducting a search. The authority to arrest can play an important protective function in assemblies, by allowing law enforcement to remove from an assembly individuals who are acting violently. The term “arrest” refers to any deprivation of liberty, and is not limited to formal arrest under domestic law. It is critical that arrest powers are exercised consistently with international human rights standards, including those relating to the rights to privacy, liberty, and due-process rights. No one may be subject to arbitrary arrest or detention. In the context of assemblies this has particular import for the criminalization of assemblies and dissent. Arrest of protestors to prevent or punish the exercise of their right to freedom of peaceful assembly, for example on charges that are spurious, unreasonable or lack proportionality, may violate these protections. Similarly, intrusive pre-emptive measures should not be used unless a clear and present danger of imminent violence actually exists. “Mass arrest” of assembly participants often amounts to indiscriminate and arbitrary arrests. Where an arrest takes place detention conditions must meet minimum standards. This applies to any location or situation in which an individual has been deprived of his or her liberty, including jails, holding cells, public spaces and vehicles used to transfer detainees, and any other location in which detainees are held. Detainees must be treated in a humane manner and with respect for their dignity, and shall not be subjected to torture or cruel, inhuman or degrading treatment or punishment. The imposition of administrative detention is especially troubling. The Human Rights Committee has emphasized that such detention, not in contemplation of prosecution on a criminal charge, presents severe risks of arbitrary deprivation of liberty. The issue of proportionality is particularly relevant to administrative sanctions imposed in the context of assemblies. Any penalty must not be excessive — for example, a disproportionately large fine. Such penalties raise due-process concerns, and may have a chilling effect more broadly on the exercise of the right to freedom of peaceful assembly.[[126]](#footnote-126)

***What is the role of the various forms less-lethal weapons and equipment that are available, and how should they be regulated?***

States are required to procure less lethal weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury. Less-lethal weapons must be subject to independent scientific testing and approval, and used responsibly by well-trained law enforcement officials, as such weapons may have lethal or injurious effects if not used correctly or in compliance with international law and human rights standards. States should work to establish and implement international protocols for the training on and use of less-lethal weapons.[[127]](#footnote-127)

The Special Rapporteur notes the statement made by the police that they always check if a new weapon complies with the protocols prior to using it. However, he stresses that the use of gas and water cannons present significant risks of harm, especially since their use does not discriminate between demonstrators and bystanders, healthy people and people with health conditions.[[128]](#footnote-128)

Weapons and tactics should allow for a graduated response and de-escalation of tensions. Accordingly, the provision of a firearm to law enforcement officials with no less-lethal alternative other than a baton is unacceptable.[[129]](#footnote-129)

The Special Rapporteur is aware of the efforts to further elaborate international legal standards with respect to the management of assemblies and acknowledges in this regard the current discussions on the development of Guidance on less-lethal weapons (LLWs) and related equipment in law enforcement under the auspices of the Geneva Academy and the Institute for International and Comparative Law in Africa (University of Pretoria), that intend to provide guidance on the lawful and responsible design, production, procurement, testing, training, transfer, deployment, and use of LLWs and related equipment.

***May some such weapons never be used, or only under certain circumstances? Horses and dogs? Firearms? Private security providers?***

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”.[[130]](#footnote-130)

The Special Rapporteur is alarmed by the latitude afforded to corporations and private military and security companies in relation to policing, and often suppressing, peaceful protests. He echoes the grave concerns expressed by other special procedures mandate holders about these companies suppressing legitimate advocacy activity, particularly social protest, and their attacks on human rights defenders (see A/HRC/7/7/Add.4, para. 71, and A/HRC/19/55, para. 63). In his view, the potential for violations of rights, including to peaceful assembly and association rights, is particularly high when law enforcement responsibilities are ceded to private actors, who are accountable to their clients rather than to the public. Private security companies have also been known to receive concessions to exploit natural resources in exchange for their services, further blurring the interests and relationships between the actors (see A/61/341, para. 74).[[131]](#footnote-131)

The Special Rapporteur reiterates that the primary responsibility for ensuring public security, law and order for the benefit of all within a State’s boundaries lies with the Government of that State. The State should also regulate, control and monitor the activities of private security firms, including those contracted in the natural resource exploitation sector, and hold them accountable when they breach the rights to freedom of peaceful assembly and of association. [[132]](#footnote-132)

The principles of necessity and proportionality apply to the use of all force, including potentially lethal force. Specific rules apply to the use of firearms for law enforcement, also during assemblies. Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary).[[133]](#footnote-133)

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.

The Inter-American Commission has indicated that “firearms must not be used by security forces to control social protests. The prohibition on officials who might have contact with demonstrators carrying firearms and lead munitions has proven to be the best measure for preventing lethal violence and deaths in contexts of social protest. The operations may include having firearms and lead munitions somewhere outside the radius of action of the demonstration for those exceptional cases in which there is a situation of actual, serious, and imminent risk to persons that makes their use warranted. In such an extreme circumstance there should be explicit rules concerning who has the power to authorize their use and the ways in which such authorization is to be documented”.[[134]](#footnote-134)

***Can dispersal ever be justified where an assembly is entirely peaceful/non-coercive?***

The Special Rapporteur holds the view that as long as such an assembly is peaceful, States have the obligation to facilitate the gathering whether or not authorities agree with the content of the message. Any interference with such peaceful assemblies, including dispersal, should meet the strict tests of necessity and proportionality stipulated in international human rights standards.[[135]](#footnote-135)

Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (see A/HRC/26/36, para. 75). Intentional lethal use of force is only lawful where it is strictly unavoidable to protect another life from an imminent threat; this is sometimes referred to as the protect life principle (ibid., para. 70). Dispersing an assembly carries the risk of violating the rights to freedom of expression and to peaceful assembly as well as the right to bodily integrity. Dispersing an assembly also risks escalating tensions between participants and law enforcement. For these reasons, it must be resorted to only when strictly unavoidable. For example, dispersal may be considered where violence is serious and widespread and represents an imminent threat to bodily safety or property, and where law enforcement officials have taken all reasonable measures to facilitate the assembly and protect participants from harm. Before countenancing dispersal, law enforcement agencies should seek to identify and isolate any violent individuals separately from the main assembly and differentiate between violent individuals in an assembly and others. This may allow the assembly to continue.[[136]](#footnote-136)

International law allows for dispersal of a peaceful assembly only in rare cases. For example, a peaceful assembly that incites discrimination, hostility or violence, in contravention of article 20 of the International Covenant on Civil and Political Rights, may warrant dispersal if less intrusive and discriminatory means of managing the situation have failed. Similarly, while mere inconvenience to others, or temporary disruption of vehicular or pedestrian traffic, are to be tolerated, where an assembly prevents access to essential services, such as blocking the emergency entrance to a hospital, or where interference with traffic or the economy is serious and sustained, for example, where a major highway is blocked for days, dispersal may be justified. Failure to notify authorities of an assembly is not a basis for dispersal. Only governmental authorities or high-ranking officers with sufficient and accurate information of the situation unfolding on the ground should have the authority to order dispersal. If dispersal is deemed necessary, the assembly and participants should be clearly and audibly informed, and should also be given reasonable time to disperse voluntarily. Only if participants then fail to disperse may law enforcement officials intervene further.[[137]](#footnote-137)

Only governmental authorities or high-ranking officers with sufficient and accurate information of the situation unfolding on the ground should have the authority to order dispersal. If dispersal is deemed necessary, the assembly and participants should be clearly and audibly informed, and should also be given reasonable time to disperse voluntarily. Only if participants then fail to disperse may law enforcement officials intervene further.[[138]](#footnote-138)

***What are the alternatives to dispersal?***

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.

# **Question 12**

# ***What are the rights of those who wish to observe and record assemblies and how they are policed, including participants, bystanders and the media?***

States and their law enforcement agencies and officials are obligated under international law to respect and protect, without discrimination, the rights of all those who participate in assemblies, as well as monitors and bystanders. (The conduct of law enforcement officials is governed, inter alia, by human rights law, the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.)[[139]](#footnote-139)

All persons enjoy the right to observe, and by extension monitor, assemblies. This right is derived from the right to seek and receive information, which is protected under article 19 (2) of the International Covenant on Civil and Political Rights. The concept of monitoring encapsulates not only the act of observing an assembly, but also the active collection, verification and immediate use of information to address human rights problems.[[140]](#footnote-140)

A monitor is generally defined as any non-participant third-party individual or group whose primary aim is to observe and record the actions and activities taking place at public assemblies. National human rights institutions, ombudsmen, intergovernmental entities and civil society organizations all commonly act as monitors. Journalists, including citizen journalists, play an important role.[[141]](#footnote-141)

States have an obligation to protect the rights of assembly monitors. This includes respecting and facilitating the right to observe and monitor all aspects of an assembly, subject to the narrow permissible restrictions outlined in article 19 (3) of the International Covenant on Civil and Political Rights. Monitors retain all other human rights. The State should fully investigate any human rights violation or abuse against monitors, and should pursue prosecution and provide adequate remedy. The protections afforded to monitors apply irrespective of whether an assembly is peaceful. Everyone — whether a participant, monitor or observer — shall enjoy the right to record an assembly, which includes the right to record the law enforcement operation. This also includes the right to record an interaction in which he or she is being recorded by a State agent — sometimes referred to as the right to “record back”. The State should protect this right. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.[[142]](#footnote-142)

The Special Rapporteur recommends that States ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies[[143]](#footnote-143) and that States prohibit by law any interference with the recording of an assembly, including the seizure or damage of any equipment, except that pursuant to a warrant from a judge, where the judge considers that it has probative value.[[144]](#footnote-144)

# **Question 13**

# ***How should accountability for violations or abuses of rights by all parties concerned during assemblies be approached?***

As part of their responsibility to ensure accountability, States must establish effective reporting and review procedures to address any incident in relation to an assembly during which a potentially unlawful use of force occurs. A clear and transparent command structure must be established to minimize the risk of violence or the use of force, and to ensure responsibility for unlawful acts or omissions by officers. Proper record keeping of decisions made by command officers at all levels is also required. In addition, there should be a clear system of record keeping or register of the equipment provided to individual officers in an operation, including vehicles, firearms and ammunition.[[145]](#footnote-145)

As it has already been mentioned, States have an obligation to establish accessible and effective complaints mechanisms that are able to independently, promptly and thoroughly investigate allegations of human rights violations or abuses in order to hold those responsible accountable. This not only entails guarantees that the violation be stopped, but also that it will not be repeated in the future. The Special Rapporteur considers as best practice legislation which provides for criminal and disciplinary sanctions against those who interfere with or violently disperse public assemblies through excessive use of force (e.g. Bulgaria, Burkina Faso, Colombia, Cote d’Ivoire, Cuba, Estonia, Japan, Kyrgyzstan, Portugal, Republic of Moldova, Serbia and Spain). More specifically, in Colombia, according to the law, the excessive or arbitrary use of force against peaceful demonstrators constitutes a grave breach, under the disciplinary regime for the national police. Similarly, in Portugal, a decree-law foresees sanctions against authorities who hinder the right to freedom of peaceful assembly, and article 382 of Criminal Code sets the applicable sanctions in relation to the abuse of power. In this connection, the Special Rapporteur stresses the importance of police officers wearing visible identification numbers on their uniforms. As noted by the Hungarian Office of the Commissioner for Fundamental Rights, during a protest that was violently repressed in the country, many police officers could not be identified because they did not wear such identification numbers. National human rights institutions, which comply with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), can also play a role in receiving and investigating allegations of human rights violations and abuses (e.g. Malaysia and Portugal). The work of these institutions should be respected and facilitated by the authorities. Where the rights to freedom of peaceful assembly and of association are unduly restricted, the victim(s) should have the rights to obtain redress and to fair and adequate compensation. Once again, due attention must be paid to victims belonging to the groups most at risk in this process.[[146]](#footnote-146)

The State bears an obligation to provide to those whose rights have been violated in the context of an assembly an adequate, effective and prompt remedy determined by a competent authority having the power to enforce remedies. The right to remedy includes the right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. States must investigate any allegations of violations in the context of assemblies promptly and effectively through bodies that are independent and impartial. In addition, the procedural component of the right to life requires States to investigate any alleged unlawful or arbitrary killing. The failure of a State to properly investigate suspected unlawful or arbitrary killing is a violation of the right to life itself (A/70/304). Likewise, lack of accountability for violations of the rights to bodily integrity may itself constitute a violation of those rights. Effective investigation includes the following factors: an official investigation initiated by the State; independence from those implicated; capability of determining whether the act was justified in the circumstances; a level of promptness and reasonable expedition; and a level of public scrutiny.(European Court of Human Rights, *Isayeva v. Russia*,application No. 57950/00, 24 February 2005. See also A/HRC/26/36, para. 80.)[[147]](#footnote-147)

Where appropriate, criminal and/or civil sanctions must be applied. Liability should extend to officers with command control where they have failed to exercise effective command and control. Where superior officers knew, or should have known, that law enforcement officials under their command resorted to the unlawful use of force or firearms, and they did not take all measures in their power to prevent, suppress or report such use, they should also be held responsible.(Principle 24 of the Basic Principles.)[[148]](#footnote-148)

Prosecutors should carry out their functions impartially and without discrimination, and should give due attention to prosecuting crimes committed by public officials. When law enforcement officials are prosecuted, the judiciary shall decide matters impartially, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect. Defendants should be brought before an ordinary court or tribunal, and shall be availed of the fair trial protections guaranteed under international law.

In addition to guaranteeing accountability through judicial processes, States should implement additional levels of non-judicial oversight, including an effective internal investigations process and an independent oversight body. These systems should operate in addition to, and not as an alternative to, criminal, public and private legal remedies for police misconduct. The role of a dedicated civilian oversight body may be complemented by the work of the national human rights institution or ombudsman.

Acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly (para. 25) [[149]](#footnote-149) and assembly organizers and participants should also not be held responsible and liable for the violent behaviour of others.[[150]](#footnote-150)

The Special Rapporteur reiterates that the guarantees provided by international human rights standards relate only to assemblies that are peaceful (see A/HRC/20/27, para. 25). When violent incidents occur within otherwise peaceful assemblies, authorities have a duty to distinguish between peaceful and non-peaceful demonstrators, take measures to de-escalate tensions and hold the violent individuals — not the organizers — to account for their actions. The potential for violence is not an excuse to interfere with or disperse otherwise peaceful assemblies. This principle is all the more important because violence in the course of peaceful protests may be instigated to justify the dispersal of a protest.[[151]](#footnote-151)

As part of their responsibility to ensure accountability, States must establish effective reporting and review procedures to address any incident in relation to an assembly during which a potentially unlawful use of force occurs.(Principle 22 of the Basic Principles, and article 8, with commentary, of the Code of Conduct.)[[152]](#footnote-152)

A State can incur responsibility for violations of human rights by non-State actors if it: approves, supports or acquiesces in those acts; fails to exercise due diligence to prevent the violation; or fails to ensure proper investigation and accountability. States also have a duty to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct by business enterprises, and to hold to account private parties that are responsible for causing or contributing to an arbitrary deprivation of life in the State’s territory or jurisdiction.[[153]](#footnote-153)

# **Question 14**

# ***To what extent are private actors (including the owners of shopping centers) required to allow of facilitate peaceful assemblies?***

The issue of access to public space is all the more important in light of the increased privatization of public space in many States, where peaceful assemblies have been curtailed through the use by private bodies, both companies and individuals, of civil injunctions, which can be difficult to challenge, coupled with the issue of aggravated trespass, as in the United Kingdom of Great Britain and Northern Ireland, for example.[[154]](#footnote-154)

Assemblies are an equally legitimate use of public space as commercial activity or the movement of vehicles and pedestrian traffic. Any use of public space requires some measure of coordination to protect different interests, but there are many legitimate ways in which individuals may use public spaces. A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance.(European Court of Human Rights, *Kuznetsov v. Russia*, application No. 10877/04, 23 October 2008, para. 44, and Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, para. 197.)[[155]](#footnote-155)

Business enterprises have a responsibility to respect human rights, including in the context of assemblies. This requires that businesses avoid causing or contributing to adverse human rights impacts through their own activities, and address adverse human rights impacts in which they are involved.(Principles 11 and 13 (a) of the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31), annex.) This extends to impacts that are directly linked to the operations, products or services of a business, such as where a business supplies less-lethal weapons or equipment or surveillance technologies which are used in the policing of assemblies. The trend towards the privatization of public places, such as shopping malls, pedestrian precincts and squares, means that assemblies commonly occur on property owned by business enterprises, sometimes referred to as privately owned public space. While private landowners generally have the right to determine who may access their property, the rights related to assembly may require positive measures of protection even in the sphere of relations between individuals.[[156]](#footnote-156)

Business entities should carry out human rights due diligence, and where a potential impact on assembly and related rights is identified mitigate these risks. Civilian private security services should not perform policing-type functions in relation to assemblies. However, where this occurs, such services must respect and protect human rights and should comply with the highest voluntary standards of conduct.[[157]](#footnote-157)

Business entities commonly seek injunctions and other civil remedies against assembly organizers and participants on the basis, for example, of anti-harassment, trespass or defamation laws, sometimes referred to as strategic lawsuits against public participation. States have an obligation to ensure due process and to protect people from civil actions that lack merit. A State can incur responsibility for violations of human rights by non-State actors if it: approves, supports or acquiesces in those acts; fails to exercise due diligence to prevent the violation; or fails to ensure proper investigation and accountability. States also have a duty to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct by business enterprises, and to hold to account private parties that are responsible for causing or contributing to an arbitrary deprivation of life in the State’s territory or jurisdiction.[[158]](#footnote-158)

***How should the responsibility of States in such situations be approached? How should public places (partly) owned by a State company (e.g. airports) be treated?***

# **Question 16**

# ***Is it correct to say that ‘there is no such thing as an unprotected assembly’ because even if the assembly is no longer peaceful, those involved retain their other rights, such as their rights against ill-treatment and the right to life?***

Even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain all the other rights, subject to the normal limitations. No assembly should thus be considered unprotected.[[159]](#footnote-159)

Even where assemblies are not peaceful, participants do not lose the protection of a number of other rights, such as, among others, the rights to freedom of expression, association and belief; participation in the conduct of public affairs; and bodily integrity (see A/HRC/31/66, paras. 8 and 9).[[160]](#footnote-160)

The Special Rapporteur particularly emphasizes that the right to life and the right to be free from torture or cruel, inhuman or degrading treatment or punishment should be guaranteed by States to all individuals under all circumstances and at all times, including in the context of the exercise of the rights to freedom of association and of peaceful assembly, as prescribed by article 4 of the Covenant.[[161]](#footnote-161)

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”.(Inter-American Court of Human Rights judgment, Caracazo v. Venezuela (2002), para. 127.) 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).[[162]](#footnote-162)

The Special Rapporteur has recommended that States ratify relevant international treaties and should establish in law a positive presumption in favor of peaceful assembly. They should provide legal protection for the different rights that protect those engaged in assemblies and enact and continuously update the laws, policies and processes necessary to implement these rights. No assembly should be treated as an unprotected assembly.[[163]](#footnote-163)

# **Question 17**

# ***What is the relationship between article 21 and other rights in the ICCPR, such as privacy (article 17); freedom of movement (article 12) freedom of expression and access to information (article 19); advocacy of hatred etc. (article 20); association (article 22); political participation (article 25); and equality and non-discrimination (articles 2 (1); 3; 26) (e.g. people who are frequently targeted, or in positions of vulnerability).***

Assemblies are also an instrument through which other social, economic, political, civil and cultural rights can be expressed, meaning they play a critical role in protecting and promoting a broad range of human rights. They can be instrumental in amplifying the voices of people who are marginalized or who present an alternative narrative to established political and economic interests. Assemblies present ways to engage not only with the State, but also with others who wield power in society, including corporations, religious, educational and cultural institutions, and with public opinion in general.[[164]](#footnote-164)

The proper management of assemblies requires the protection and enjoyment of a broad range of rights by all the parties involved. Those who take part in assemblies have a number of protected rights, including the rights to freedom of peaceful assembly, expression, association and belief; participation in the conduct of public affairs; bodily integrity, which includes the rights to security, to be free from cruel, inhuman or degrading treatment or punishment, and to life; dignity; privacy; and an effective remedy for all human rights violations.[[165]](#footnote-165)

In addition the Special Rapporteur would like to bring to the attention of the Human Rights Committee his report on the linkages between the exercise of the rights to freedom of peaceful assembly and of association and the implementation of the 2030 Agenda for Sustainable Development[[166]](#footnote-166) as he considers that the Committee should also consider the essential nature of these rights, and in particular the right to peaceful assembly, in achieving sustainable development.

**General**

# **Question 18**

# ***In interpreting article 21 of the ICCPR, should any weight be attached to possible differences between the right of peaceful assembly (droit de réunion); peaceful demonstration (or peaceful protest) (droit de manifestation) and the right of peaceful gathering (droit de rassemblement)?***

The Special Rapporteur recognizes that his mandate relates to the right of freedom to peaceful assembly; however in some regional contexts he has referred to the right to protest as it is more commonly used for example in Latin America and in Africa.

The Special Rapporteur believes that the terms referring to right to protest, right to peaceful demonstration and right to peaceful gathering have been used interchangeably and that in interpreting article 21 no particular weight should be given to the usage of these terms as they all refer to the same right which is the right to freedom of peaceful assembly.

**Question 19**

***In all of the above please keep in mind the role of gender in assemblies and the role of new technologies: the use of social media to organize and advertise assemblies; the use of mobile phones and other devices (CCTV cameras, satellites) to record assemblies; the use of body-worn cameras; etc. Moreover, to what extent does the right of peaceful assembly apply in the digital space?***

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 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).[[167]](#footnote-167)

The Special Rapporteur is of the opinion that organizers and participants of peaceful assemblies should be allowed access to the Internet and other new technologies at all times, as made clear by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, who also stated that “any determination 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”.(A/HRC/17/27, paras. 70 and 79.) In this connection, the OSCE/ODIHR Panel of Experts recommended that “States should ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded in any way”. (OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, p. 35).

Finally, the Human Rights Council, in its resolution 20/8, recognized the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms (para. 2) and “called upon all States to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries” (para. 3).

Likewise, new communications technologies, in particular the Internet, should be seen by the authorities as an excellent opportunity to interact with a large and diversified audience prior to and during peaceful assemblies, with a view to sensitizing them on their role and functions, and ultimately building or reinforcing trust among the population.

The Special Rapporteur is concerned that access to new communications technologies, in particular the Internet, or to specific websites, has allegedly been temporarily blocked prior to, during or after peaceful assemblies (e.g., in Algeria, China and Egypt). The Special Rapporteur also warns against possible abusive use of laws governing the prevention and fight against offences linked to information and communications technologies, which “should be applied only as an exception to the general norm of permitting the open and free use of the Internet, like all other forms of communication; only very few qualified and clearly legislated exceptions should be permitted”.[[168]](#footnote-168)

The capacity to use communication technologies securely and privately is vital to the organization and conduct of assemblies. Restrictions to online access or expression must be necessary and proportionate and applied by a body independent of any political, commercial or other unwarranted influences, and there should be adequate safeguards against abuse[[169]](#footnote-169). The practice of blocking communications — impeding the organization or publicizing of an assembly online — rarely satisfies these requirements.

While there may be legitimate law enforcement and accountability reasons to record an assembly, the act of recording participants may have a chilling effect on the exercise of rights, including freedom of assembly, association and expression. Recording peaceful assembly participants in a context and manner that intimidates or harasses is an impermissible interference to these rights.[[170]](#footnote-170)

In some States, laws of general application may have a disproportionate impact on the assembly rights of certain groups, whether intentionally or inadvertently. For example, laws governing the prevention and combating of offences linked to information and communications technology have the potential to be applied in ways that hinder the organization of peaceful assemblies. Youth, being the largest demographic of social media users, are particularly affected by restrictive Internet access policies. The Special Rapporteur warns that restrictions to information and communications technologies should be applied exceptionally. The general norm should be to permit the open and free use of the Internet and other forms of communications.[[171]](#footnote-171)

Everyone — whether a participant, monitor or observer — shall enjoy the right to record an assembly, which includes the right to record the law enforcement operation. This also includes the right to record an interaction in which he or she is being recorded by a State agent — sometimes referred to as the right to “record back”. The State should protect this right. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.[[172]](#footnote-172)

The appropriate use of body-worn cameras by law enforcement personnel in the context of assemblies could assist the work of internal investigations or civilian oversight mechanisms. Such technology is in its infancy, and delicate balancing of potential intrusions into privacy should be considered, but at this stage there seems to be potential to promote accountability, where adequate safeguards are in place.[[173]](#footnote-173)

The use of new technologies in exercising the right to freedom of peaceful assembly is certainly and chapter where special attention from the Human Rights Committee would be highly appreciated.

As mentioned in replying question 2, the Special Rapporteur will present a full report on the exercise of the right to freedom of association with the view of mapping new digital landscape for civil society and social movements and to understand the positive impact of digital technologies on the exercise of freedom of peaceful assembly. In addition, he will explore the existing challenges and threats that exist in the digital age and how human rights principles can respond to these challenges identified. The Special Rapporteur will further explore the positive obligations of the State and the role of the private sector, in particular technology companies, in relation to the exercise the these public freedoms. The report will be presented at the 41st session of the Human Rights Council in June 2019.

***Can ‘gathering’ online impose obligations on States and other actors to facilitate it?***

Although an assembly has generally been understood as a physical gathering of people, it has been recognized that human rights protections, including for freedom of assembly, may apply to analogous interactions taking placeonline.[[174]](#footnote-174)

The Special Rapporteur firmly believes that the rights to freedom of peaceful assembly and of association apply both offline and online, as the Human Rights Council has affirmed in its resolutions 21/16 and 26/13.

He was therefore concerned to hear during his visit to Oman that the authorities had reportedly employed a variety of tactics to clamp down on and control the use of information and communications technology. There are widespread reports that authorities systematically hack into online accounts and hijack them and flood social media such as Twitter with an endless stream of hashtag references, thus disrupting discussion on specific topics. The example of the Omani Group for Human Rights is instructive. In addition to online surveillance, authorities reportedly went as far as preventing the group members from communicating on WhatsApp. Voice over Internet Protocol services such as Skype are blocked in Oman, a situation that the Special Rapporteur experienced firsthand. The Special Rapporteur reiterates that States have the obligation to ensure that online assemblies are facilitated in accordance with international human rights standards.[[175]](#footnote-175)

As mentioned above, the Special Rapporteur will present a full report on the exercise of the right to freedom of association and peaceful assembly to the 41 session of the Human Rights Council in June 2019.

***May unmanned weapon or surveillance systems (remote or autonomous) be used by law enforcement officials during demonstrations?***

A growing range of weapons that are remote controlled are becoming available, particularly in the context of the policing of assemblies. Great caution should be exercised in this regard. Where advanced technology is employed, law enforcement officials must, at all times, remain personally in control of the actual delivery or release of force.[[176]](#footnote-176)

# **Question 20**

# ***Please identify ‘soft-law’ instruments that may be of relevance to the right of peaceful assembly. References to regional standards are also welcome.***

* Vienna Declaration and Programme of Action
* United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998) (hereafter UN Declaration on Human Rights Defenders) (Article 12)
* Relevant General Assembly resolutions, in particular [resolution 73/173](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/173)
* Relevant UN Human Rights Council resolutions, in particular: [resolution 15/21](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/15/21); [resolution 19/35](http://ap.ohchr.org/documents/dpage_e.aspx?si=A%2FHRC%2FRES%2F19%2F35); [resolution 21/16](https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/63/PDF/G1217463.pdf?OpenElement); [resolution 22/10](http://ap.ohchr.org/documents/dpage_e.aspx?si=A%2FHRC%2FRES%2F22%2F10); [resolution 24/5](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/24/5); [resolution 25/38](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/134/30/PDF/G1413430.pdf?OpenElement); [resolution 31/37](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/31/37); [resolution 32/32](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/32).
* 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](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx))
* American Declaration of the Rights and Duties of Man.
* American Convention on Human Rights and the Declaration of Principles on Freedom of Expression.
* ASEAN human rights declaration (Article 24)
* Arab Charter on Human Rights (Article 24.6)
* OSCE Office for Democratic Institutions and Human Rights (ODIHR) Guidelines on Freedom of Peaceful Assembly (2007) and Handbook on Monitoring Peaceful Assemblies, (2011)
* Guidelines on Freedom of Association and Assembly in Africa (2017 <http://www.achpr.org/files/special-mechanisms/human-rights-defenders/policing_of_assemblies_training_manual.pdf>

<http://www.achpr.org/files/special-mechanisms/human-rights-defenders/guidelines_foaa_eng.pdf>

http://www.achpr.org/files/special-mechanisms/human-rights-defenders/report\_of\_the\_study\_group\_on\_freedom\_of\_association\_\_assembly\_in\_africa.pdf

For additional information on the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, please visit the following website at <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx> or contact him by email: freeassembly@ohchr.org

1. A/72/135, para. 14 [↑](#footnote-ref-1)
2. A/72/135, para. 17 [↑](#footnote-ref-2)
3. A/73/279 [↑](#footnote-ref-3)
4. A/HRC/20/27, para. 12 [↑](#footnote-ref-4)
5. A/HRC/31/66, paras. 5-6 [↑](#footnote-ref-5)
6. A/68/299, para. 6 [↑](#footnote-ref-6)
7. A/HRC/20/27, para. 23 [↑](#footnote-ref-7)
8. A/68/299, para. 5 [↑](#footnote-ref-8)
9. A/68/299, para. 7 [↑](#footnote-ref-9)
10. A/HRC/20/27/Add.2, para. 68 [↑](#footnote-ref-10)
11. A/HRC/20/27, para. 25 [↑](#footnote-ref-11)
12. A/HRC/23/39, para. 50 [↑](#footnote-ref-12)
13. OSCE-ODIHR and Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2nd edn, 2010, Guideline 1.3. [↑](#footnote-ref-13)
14. A/HRC/20/27, para. 24 [↑](#footnote-ref-14)
15. Id. [↑](#footnote-ref-15)
16. A/HRC/31/66, para. 10 [↑](#footnote-ref-16)
17. Ibid. [↑](#footnote-ref-17)
18. A/HRC/20/27, para. 32 [↑](#footnote-ref-18)
19. A/HRC/20/27, para. 25 [↑](#footnote-ref-19)
20. A/HRC/23/39, para. 49 [↑](#footnote-ref-20)
21. A/HRC/20/27 para. 93 [↑](#footnote-ref-21)
22. A/HRC/31/66, para. 18 [↑](#footnote-ref-22)
23. A/HRC/32/36/Add.2, para. 22 [↑](#footnote-ref-23)
24. A/HRC/31/66, para. 20; A/HRC/32/36/Add.2, para. 23 [↑](#footnote-ref-24)
25. A/HRC/32/36/Add.1 Para. 26 [↑](#footnote-ref-25)
26. A/HRC/20/27, ppara. 13 [↑](#footnote-ref-26)
27. A/HRC/26/29, para. 22 [↑](#footnote-ref-27)
28. A/HRC/31/66, para. 20 [↑](#footnote-ref-28)
29. A/HRC/31/66, para. 15 [↑](#footnote-ref-29)
30. A/HRC/31/66, para. 19 [↑](#footnote-ref-30)
31. A/HRC/20/27, para. 19 [↑](#footnote-ref-31)
32. A/HRC/31/66, para. 37 [↑](#footnote-ref-32)
33. A/HRC/31/66, para. 40 [↑](#footnote-ref-33)
34. A/HRC/31/66, para. 14 [↑](#footnote-ref-34)
35. A/HRC/20/27, para. 89 [↑](#footnote-ref-35)
36. A/HRC/29/25, para. 72 (b) [↑](#footnote-ref-36)
37. A/HRC/29/25, para. 72 (f) [↑](#footnote-ref-37)
38. A/HRC/29/25, para. 68 [↑](#footnote-ref-38)
39. A/HRC/31/66, para. 41 [↑](#footnote-ref-39)
40. A/HRC/20/27, para. 46 [↑](#footnote-ref-40)
41. A/HRC/31/66, para. 37 [↑](#footnote-ref-41)
42. A/HRC/20/27, para. 39 [↑](#footnote-ref-42)
43. A/HRC/31/66, para. 14 [↑](#footnote-ref-43)
44. A/HRC/20/27, para. 33 [↑](#footnote-ref-44)
45. A/HRC/20/27, para. 30 [↑](#footnote-ref-45)
46. A/HRC/31/66, para. 24 [↑](#footnote-ref-46)
47. A/HRC/23/39, para. 49 [↑](#footnote-ref-47)
48. A/HRC/31/66, para. 37 [↑](#footnote-ref-48)
49. A/HRC/23/39, para. 71 [↑](#footnote-ref-49)
50. A/HRC/17/28, para. 119 [↑](#footnote-ref-50)
51. A/HRC/23/39, para. 56A/HRC/31/66, para. 38 [↑](#footnote-ref-51)
52. A/HRC/29/25, para. 48 [↑](#footnote-ref-52)
53. A/HRC/23/39/Add.1, para. 69 [↑](#footnote-ref-53)
54. A/HRC/23/39/Add.1, para. 78 [↑](#footnote-ref-54)
55. A/HRC/20/27, parr. 55 [↑](#footnote-ref-55)
56. A/HRC/29/25, para. 76 [↑](#footnote-ref-56)
57. A/HRC/23/39/Add.1, para. 52 [↑](#footnote-ref-57)
58. A/HRC/20/27, para. 50 [↑](#footnote-ref-58)
59. A/HRC/23/39, para. 47 [↑](#footnote-ref-59)
60. A/HRC/20/27, para. 18 [↑](#footnote-ref-60)
61. A/HRC/23/39, paras. 49-50 [↑](#footnote-ref-61)
62. A/HRC/20/27, para. 26 [↑](#footnote-ref-62)
63. A/HRC/23/39, para. 50 [↑](#footnote-ref-63)
64. A/HRC/23/39, para. 48 [↑](#footnote-ref-64)
65. European Court of Human Rights, Handyside v. the United Kingdom, application No. 5493/72, 7 December 1976, para. 49 [↑](#footnote-ref-65)
66. A/HRC/20/27, para. 17 [↑](#footnote-ref-66)
67. A/HRC/23/39, para. 63; A/HRC/31/66, Para. 30 [↑](#footnote-ref-67)
68. A/HRC/23/39, para. 63 [↑](#footnote-ref-68)
69. A/HRC/31/66, para. 31 [↑](#footnote-ref-69)
70. A/HRC/31/66, para. 36 [↑](#footnote-ref-70)
71. A/HRC/20/27, para. 51 [↑](#footnote-ref-71)
72. A/HRC/20/27, para. 52 [↑](#footnote-ref-72)
73. A/HRC/20/27 para. 93 [↑](#footnote-ref-73)
74. A/HRC/38/34, para. 39 [↑](#footnote-ref-74)
75. A/HRC/31/66, paras. 93-95 [↑](#footnote-ref-75)
76. A/HRC/23/39, para. 81 [↑](#footnote-ref-76)
77. A/HRC/20/27, para. 42 [↑](#footnote-ref-77)
78. Ibid. [↑](#footnote-ref-78)
79. A/HRC/23/39, para. 64 [↑](#footnote-ref-79)
80. Human Rights Council resolution 25/38; see also A/HRC/20/27, para. 42; A/HRC/31/66, para. 35 [↑](#footnote-ref-80)
81. A/HRC/23/39, para. 81 [↑](#footnote-ref-81)
82. A/HRC/20/27, para. 31 [↑](#footnote-ref-82)
83. A/HRC/23/39, para. 78 [↑](#footnote-ref-83)
84. A/HRC/31/66, para. 26 [↑](#footnote-ref-84)
85. A/HRC/26/29, para. 32 [↑](#footnote-ref-85)
86. A/HRC/26/29, para. 33 [↑](#footnote-ref-86)
87. 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. [↑](#footnote-ref-87)
88. A/HRC/20/27, para. 28 [↑](#footnote-ref-88)
89. OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, para. 115 [↑](#footnote-ref-89)
90. A/HRC/23/39, para. 52-54 [↑](#footnote-ref-90)
91. A/HRC/23/39, para. 56 [↑](#footnote-ref-91)
92. CCPR/CO/82/MAR, para. 24 [↑](#footnote-ref-92)
93. European Court of Human Rights, Bukta and Others v. Hungary, application No. 25691/04 (2007) [↑](#footnote-ref-93)
94. A/HRC/20/27, para. 29 [↑](#footnote-ref-94)
95. A/HRC/20/27, para. 28 [↑](#footnote-ref-95)
96. Id; A/HRC/23/39, Para. 51 [↑](#footnote-ref-96)
97. A/HRC/31/66, para. 29 [↑](#footnote-ref-97)
98. A/HRC/20/27, para. 28 [↑](#footnote-ref-98)
99. A/HRC/23/39, para. 51 [↑](#footnote-ref-99)
100. A/HRC/31/66, paras. 23- 24 [↑](#footnote-ref-100)
101. A/HRC/35/28/Add.2, para. 29 [↑](#footnote-ref-101)
102. See: http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf para. 65 [↑](#footnote-ref-102)
103. A/HRC/23/39, para. 66 [↑](#footnote-ref-103)
104. A/HRC/31/66, para. 34 [↑](#footnote-ref-104)
105. A/HRC/20/27, para. 18 [↑](#footnote-ref-105)
106. A/HRC/29/25, para. 39 [↑](#footnote-ref-106)
107. A/HRC/31/66, para. 33 [↑](#footnote-ref-107)
108. A/68/299, para. 26 [↑](#footnote-ref-108)
109. A/HRC/20/27, para. 23 [↑](#footnote-ref-109)
110. A/HRC/31/66, para. 31 [↑](#footnote-ref-110)
111. A/HRC/23/39, para. 66 [↑](#footnote-ref-111)
112. A/HRC/23/39, para. 67 [↑](#footnote-ref-112)
113. A/HRC/20/27, para. 79 [↑](#footnote-ref-113)
114. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23886&LangID=E> [↑](#footnote-ref-114)
115. A/HRC/31/66, para. 66 [↑](#footnote-ref-115)
116. A/HRC/31/66, para. 73 [↑](#footnote-ref-116)
117. A/HRC/31/66, para. 77 [↑](#footnote-ref-117)
118. A/HRC/31/66, paras. 50,51 [↑](#footnote-ref-118)
119. A/HRC/31/66, para. 52 [↑](#footnote-ref-119)
120. A/HRC/31/66, para. 57 [↑](#footnote-ref-120)
121. A/HRC/31/66, para. 58 [↑](#footnote-ref-121)
122. A/HRC/31/66, para. 59 [↑](#footnote-ref-122)
123. A/HRC/31/66, paras. 53, 54 [↑](#footnote-ref-123)
124. A/HRC/20/27, para. 38 [↑](#footnote-ref-124)
125. A/HRC/29/25 para.41 [↑](#footnote-ref-125)
126. A/HRC/31/66, para. 43-48 [↑](#footnote-ref-126)
127. A/HRC/31/66, para. 55 [↑](#footnote-ref-127)
128. A/HRC/32/36/Add.1, para. 30 [↑](#footnote-ref-128)
129. A/HRC/31/66, para. 53 [↑](#footnote-ref-129)
130. A/HRC/17/28, para. 60 [↑](#footnote-ref-130)
131. A/HRC/29/25, para. 55 [↑](#footnote-ref-131)
132. A/HRC/29/25, para. 56 [↑](#footnote-ref-132)
133. A/HRC/31/66, para. 59 [↑](#footnote-ref-133)
134. http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-fuerza-EN.pdf para. 82 [↑](#footnote-ref-134)
135. A/HRC/29/25, para. 40 [↑](#footnote-ref-135)
136. A/HRC/31/66, paras. 60, 61 [↑](#footnote-ref-136)
137. A/HRC/31/66, para. 62 [↑](#footnote-ref-137)
138. A/HRC/31/66, para. 63 [↑](#footnote-ref-138)
139. A/HRC/31/66, para. 50 [↑](#footnote-ref-139)
140. A/HRC/31/66, para. 68; 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), para. 28. [↑](#footnote-ref-140)
141. A/HRC/31/66, para. 69 [↑](#footnote-ref-141)
142. A/HRC/31/66, paras. 70, 71 [↑](#footnote-ref-142)
143. A/HRC/20/27, para. 94 [↑](#footnote-ref-143)
144. A/HRC/31/66, para. 72 [↑](#footnote-ref-144)
145. A/HRC/31/66, paras. 64, 65 [↑](#footnote-ref-145)
146. A/HRC/20/27, para. 81 [↑](#footnote-ref-146)
147. A/HRC/31/66, paras. 89, 90 [↑](#footnote-ref-147)
148. A/HRC/31/66, para. 91 [↑](#footnote-ref-148)
149. A/HRC/23/39, para. 49 [↑](#footnote-ref-149)
150. A/HRC/20/27 para. 93 [↑](#footnote-ref-150)
151. A/HRC/29/25, para. 41 [↑](#footnote-ref-151)
152. A/HRC/31/66, para. 64 [↑](#footnote-ref-152)
153. A/HRC/31/66, para. 87 [↑](#footnote-ref-153)
154. A/HRC/23/39, para. 65 [↑](#footnote-ref-154)
155. A/HRC/31/66, para. 32 [↑](#footnote-ref-155)
156. A/HRC/31/66, paras. 83, 84 [↑](#footnote-ref-156)
157. A/HRC/31/66, para. 85 [↑](#footnote-ref-157)
158. A/HRC/31/66, paras. 86, 87 [↑](#footnote-ref-158)
159. A/HRC/31/66, para. 9 [↑](#footnote-ref-159)
160. A/HRC/32/36/Add.2, para. 24 [↑](#footnote-ref-160)
161. A/HRC/20/27, para. 19 [↑](#footnote-ref-161)
162. A/HRC/20/27, para. 35 [↑](#footnote-ref-162)
163. A/HRC/31/66, para. 17 [↑](#footnote-ref-163)
164. A/HRC/31/66, para. 6 [↑](#footnote-ref-164)
165. A/HRC/31/66, para. 8 [↑](#footnote-ref-165)
166. A/73/279 [↑](#footnote-ref-166)
167. A/HRC/20/27, para. 32 [↑](#footnote-ref-167)
168. A/HRC/20/17/Add.1, para. 105; A/HRC/23/39, para. 73 [↑](#footnote-ref-168)
169. A/HRC/17/27, para. 69 [↑](#footnote-ref-169)
170. A/HRC/31/66, para. 75 [↑](#footnote-ref-170)
171. A/HRC/23/39, para. 76; A/HRC/26/29, para. 36 [↑](#footnote-ref-171)
172. A/HRC/31/66, para. 71 [↑](#footnote-ref-172)
173. A/HRC/31/66, para. 92 [↑](#footnote-ref-173)
174. A/HRC/31/66, para. 10 [↑](#footnote-ref-174)
175. A/HRC/29/25/Add.1, para. 34 [↑](#footnote-ref-175)
176. A/69/265, paras. 77-87; A/HRC/31/66, para. 56 [↑](#footnote-ref-176)