**

***Ministry of Foreign Affairs and International Cooperation***

***Inter-ministerial Committee for Human Rights***

 ***Human Rights Council – Resolution 38/11***

***ITALY***

***Information with regard to the preparation of the thematic report on new technologies, including information and communications technology, and their impact on the promotion and protection of human rights in the context of assemblies, including peaceful protests.***

***October 2019***

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Following to your query, Italian Authorities are in a position to provide the following information prepared with the collaboration of the Ministry of the Interior – Department of Public Security and the Ministry of Economic Development.

Enshrined in art. 17 of the Italian Constitution,[[1]](#footnote-1) the right to assemble peacefully is protected at the highest normative degree in the Republic of Italy. It rests at the core of the Italian democratic system and it is not affected by current or potential effects arising from new technologies. The constitutional framework outlined by art. 17 recognizes the freedom to assemble in public places among the inviolable rights, establishing two peremptory limits for its development: the meeting must take place peacefully and without arms. The authority can prohibit the demonstrations only for proven reasons of public safety or security. This fundamental right, therefore, is guaranteed to the highest legislative rank and is not affected by possible repercussions related to the use of new information and communication technologies, while maintaining the level of protection unchanged.

1. **Laws, policies and programmes that have been developed to address the impact of new technologies, including information and communications technology, on human rights in the context of assemblies, including peaceful protests;**

RAI – Radiotelevisione Italiana, the Italian public broadcasting company, ensures a public service with the aim of reaching the different sectors of the society in order to promote the development of an inclusive, fair and supportive society, by conveying information aimed at fostering a culture of respect, civil coexistence and opposition to any form of violence. In this framework, RAI offers -through its wide range of information services provided to all multimedia platforms- a significant contribution to relevant topics such as human rights, equal opportunities and the protection against all forms of discrimination, with extensive media attention to the issue of pluralism, which represents one of the essential features of the public service mission.

In particular, Article 6 of the 2018-2022 Service Contract commits RAI to:

* anchor its information service to principles of balance, pluralism, completeness, objectivity, impartiality, independence and openness to the different political and social formations, and guarantee the rigorous respect for professional ethics from journalists and public service operators, who are required to combine the principle of freedom with that of responsibility by respecting the dignity of the person, and to promote an adequate, effective and fair debate.
* ensure pluralism in programming, in order to satisfy the citizen's rights to correct information and to form his or her own opinion.

RAI, as reported in the 2018-2022 Service Contract, is required to "improve the quality of its overall service" by contributing to "research and technological innovation and by experimenting with new transmission methods" in line with the evolution of market, in order to promote the industrial development of the country's fundamental infrastructures. Through Rai Way, RAI operates in a market characterized by a constant evolution of the technology used for the transmission and distribution of television and radio signals. For this reason, it enhances its technological assets and wealth of knowledge through a continuous process of investment, innovation and continuous training that allows it to be constantly projected towards the future of technologies in the media sector. Rai Way's research, development and innovation activity is of multidisciplinary nature and aimed at identifying, verifying and implementing solutions suitable for monitoring and improving the distribution and transmission network, through data collection and analysis of the determinants that influence the quality of the service provided to customers and end users.

1. **Effective uses of such technologies as enablers of the exercise of human rights in the context of assemblies, including peaceful protests (e.g. how new technologies have facilitated the organisation of assemblies, including peaceful protests);**

New information and communication technologies and new Internet services have had an impact not only on behaviour habits of citizens but also on the management of assemblies, including peaceful protests. There have been several cases in which social media networks have facilitated coordination of assemblies. In the last years the most common instant messaging apps have implemented communications based on E2EE (end-to-end-encryption), therefore messages are encrypted from sender to receiver and they cannot be accessed neither on the servers of the service providers. This method provides secure communication channels to manage assemblies. Many activists use the so-called deep web to share information. For deep web is meant that part of Internet not accessible to the common search engines. In this context content is not indexed and it includes several services such as email, chat, electronic bank statements.

In the framework of the freedom of assembly governed by art. 17 and the freedom of expression established by Art. 21 of the Constitutional Charter,[[2]](#footnote-2) it should be noted that new technologies offers individuals new instruments for collective participation and organizational forms. Therefore, the freedoms and new rights to be affirmed have taken on additional features as well as the concepts of public place and place open to the public have evolved. One of the peculiarities of the social communities is to represent a sort of immaterial virtual square that allows anyone who has the right to an indefinite number of accesses and visions, becoming a place for social interaction, aggregation, meetings. The same jurisprudence of the Court of Cassation defined Facebook as a place open to the public.

With reference to the promotion and protection of human rights in the context of peaceful protests, it is highlighted how the use of new technologies has certainly increased and facilitated the possibility of organizing and promoting the forms of manifestation of thought, which is facilitated by the possibility to convey the information beyond the classic communication tools used by traditional media. However, it seems appropriate to consider how the dissemination of new technologies in this area has also led to an increase in the problems connected with any illegal activities. As an example, the considerable risks associated with a possible unauthorized access to a social account used for the dissemination of political propaganda news, or the illegal blackout of online spaces dedicated to the organization of public events. It is considered useful to mention, among the online dangers in the context of virtual meetings, the phenomenon of the so-called *troll*, that is the user of a virtual community, usually anonymous, which hinders the normal development of a discussion, sending provocative, irritating or off-topic messages, in order to stir people up and disturb peaceful gatherings. Some expressive forms appear to be of particular importance, above all for the serving function performed by social networks. It is the case for example of flash mobs or of those meetings held in a public space but organized through the network. The function of the social media is therefore only preparatory, since it serves exclusively to prepare the actual event.

1. **The human rights challenges posed by interferences with the availability and use of such technologies in the context of assemblies, including peaceful protests (e.g. through networks disruptions, blocking of internet services or restrictions on secure and confidential communications);**

The United Nations A/HRC/RES/38/11 makes explicit reference to non-physical gatherings of people, by expanding the protection of human rights generally applied in the context of assemblies, such as the rights to freedom of peaceful assembly, of expression and of association, to analogous interactions taking place online. Thus, if equated to physical assemblies of people, online protests enjoy analogous rights, which shall be protected, promoted and enhanced. Paragraph 9 of the Resolution 38/11 ensures the freedom of online assemblies not being arbitrarily retained, by calling upon the States to *“*refrain from and cease measures, when in violation of international human rights law, seeking to block Internet users from gaining access to or disseminating information online”. In an era where trends of disinformation and of undue restrictions preventing Internet users from having access to or disseminating information at key political moments, with an impact on the ability to organize and conduct assemblies, are emerging, it is deemed appropriate to reaffirm that restrictive measures such as media shutdowns and blocking of Internet services directly impinge on both the right to freedom of assembly and association and the right of expression.

Art. 25[[3]](#footnote-3) of the Italian Constitution establishes the inviolability of the freedom and secrecy of every form of communication. Their limitation is allowed only by a justified act of the judiciary authority with all the necessary guarantees established by the legislative framework in place. With regard to assemblies, including peaceful protests, the possibility for the Italian authority of public security (*Questore*) to interdict communication with interferences, networks disruptions, blocking of internet services or restrictions on secure and confidential communications, is therefore excluded.

1. **The human rights challenges posed by the use of new technologies, including information and communications technology, in the context of assemblies, including peaceful protests (e.g. the use of surveillance and monitoring tools by the authorities, including biometrics-based recognition technology to identify protestors);**

The misuse of new technologies, including information and communications technology, could be used for directing or committing violation of human rights. As recognized in September 2018 by the European Court of Human Rights in its ruling addressing the proportionality of interception of communications (Big Brother Watch and others v. United Kingdom - Applications nos. 58170/13, 62322/14 and 24960/15) [2018] ECHR 722), AI surveillance could lead to the breach of fundamental rights and freedoms, as well as it could be exploited in order to reinforce repression in areas with bleak human rights records. It is precisely with the aim of minimizing these risks, beyond the need to increase the general regulation of an innovative sector rapidly evolving, that in January 2018 the European Parliament adjourned the Regulation (EC) No 428/2009 through the adoption of several amendments to its proposal for regulation (COM(2016)0616 – C8‑0393/2016 – 2016/0295(COD). By the recognition of sophisticated networks of invasive digital surveillance, including facial recognition technology and data collection, as potential dual-use items, the EU ruled for the control of export, transit and brokering in order to contribute to international peace and security. The EU export controls both contribute to the EU’s Security Strategy and reflect the EU’s commitment to protect human rights, including “the right to privacy, the right to data protection, freedom of expression and freedom of assembly and association” (Amendment No. 2, Recital No. 5). Italy’s commitment to ensure the protection of human rights has been largely demonstrated even prior to the EU Parliament’s adoption of this new regulatory framework in 2018: indeed, in 2016 and 2017 the Italian Ministry of Economic Development suspended and then revoked export licenses for cyber surveillance companies (Hacking Team and AREA S.p.A., respectively) supplying surveillance technologies to allegedly repressive regimes.

1. **The impact on human rights of the use of new less-lethal weapons and ammunition technology in the context of assemblies, including peaceful protests.**

With regard to dissuasive special equipment supplied to the mobile departments - truncheons, teargas and hydrants - it is important to point out that the respective methods of use are governed by strict guidelines. In particular, the “Guidelines for the optimization of public order management and public safety activity”, issued in March 2019, by setting the criteria to maintain public order and to protect and assist people in need, contain useful references and in-depth information on the various aspects that make up the articulated action of government of the public order, with the aim of creating unitary procedures and models of intervention, favoring the identification of strategic choices and organizational/operational solutions most appropriate to different scenarios. In this context, specific attention is paid to the criteria for the correct use of force during services to protect public order, on the occasion of street demonstrations, with reference to the current legislation of the Penal Code, the Consolidated Law on public security (*Testo unico delle leggi di pubblica sicurezza*, TULPS), the Law No. 110 of July 14, 2017, on the Introduction of the Crime of Torture in the Italian Legal System, the 2001 the European Code of Police Ethics and the European Convention on Human Rights (ECHR). In summary, the use of force must be carefully considered in the concrete situation and in the respect of basic principles of suitability, necessity and proportionality.

Despite being by definition a less dangerous alternative to firearms, LLW might also have undesirable and unexpected side effects, e.g. serious injuries, when misused or used by untrained personnel. Therefore, all necessary measures to avoid, or at least minimize, the risk of injury or death shall be taken by law enforcement officials in accordance with international law. Even before the publication of the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement in August 2019, Italy had implemented and enforced the regulation over LLW utilization. Especially with reference to conducted electrical weapons causing neuromuscular incapacitation, the Ministry of the Interior adopted in 2018 the “Technical-operational guidelines for the start of testing of the electric gun called Taser – X2 model” with the aim not only to avoid any potentially unlawful use of this specific LLW, but also to set measures, procedures, precautions and training guidelines for law enforcement officials.

1. Art. 17 - Citizens have the right to assemble peaceably and unarmed. No previous notice is required for meetings, including those held in places open the public. In case of meetings held in public places, previous notice shall be given to the authorities, who may prohibit them only for proven reason of security or public safety [↑](#footnote-ref-1)
2. Art. 21 - Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorisation or censorship. Seizure may be permitted only by judicial order stating the reason and only for offences expressly determined by the law on the press or in case of violation of the obligation to identify the persons responsible for such offences. In such cases, when there is absolute urgency and timely intervention of the Judiciary is not possible, a periodical may be confiscated by the criminal police, which shall immediately and in no case later than 24 hours refer the matter to the Judiciary for validation. In default of such validation in the following 24 hours, the measure shall be revoked and considered null and void. The law may introduce general provisions for the disclosure of financial sources of periodical publications. Publications, performances, and other exhibits offensive to public morality shall be prohibited. Measures of preventive and repressive measure against such violations shall be established by law. [↑](#footnote-ref-2)
3. Art. 25 - No case may be removed from the court seized with it as established by law. No punishment may be inflicted except by virtue of a law in force at the time tehe offence was committed. No restriction may be placed on a person's liberty save for as provided by law. [↑](#footnote-ref-3)