



General Assembly

Distr.: General
21 January 2013

Original: English

Human Rights Council

Twenty-second session

Agenda items 2 and 3

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 19/35 requesting the High Commissioner for Human Rights to prepare and submit a thematic report on effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests.

Member States, regional organizations, national human rights institutions and civil society organizations provided input for this report. In accordance with resolution 19/35, this report also includes information drawn from treaty bodies and relevant thematic special procedure mandate holders.

* Late submission.

Based on the input provided, the report outlines examples of effective measures and best practices to promote and support the promotion and protection of human rights in the context of peaceful protests. It concludes that peaceful protests are a fundamental aspect of a vibrant democracy. The promotion and protection of peaceful protests require not only an adequate legal framework but also continuous efforts for their effective implementation. Dialogue between protest organizers, administrative authorities and the police, as well as human rights training programmes for police forces, including on the use of force during protests, can contribute to the promotion and protection of the human rights linked to peaceful protests.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–2	4
II. Treaty bodies	3–7	4
III. Special procedures	8–24	5
IV. National legislation, effective measures and best practices	25–76	8
A. Relevant national legislation	25–33	8
B. Measures and best practices	34–76	9
V. Conclusions	77–78	17

I. Introduction

1. In its resolution 19/35, the Human Rights Council requested the High Commissioner for Human Rights to prepare and submit a thematic report to the Council, prior to its twenty-second session, on effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests.

2. The Council encouraged relevant thematic special procedures mandate holders, including the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights defenders, to contribute to this report. It further requested the High Commissioner for Human Rights, to draw on the experience of treaty bodies and to seek the views of States and relevant partners, such as United Nations agencies, regional organizations, national human rights institutions and civil society organizations when preparing the report.¹

II. Treaty bodies

3. Participation in peaceful protests can be an important form of exercise of the rights to freedom of peaceful assembly and freedom of expression established in articles 21 and 19 respectively of the International Covenant on Civil and Political Rights.² According to general comment No. 34 (2011) of the Human Rights Committee, freedom of opinion and freedom of expression are indispensable conditions for the full development of the person; such freedoms are essential for any society and constitute the foundation stone for every free and democratic society (para. 2).

4. Recent jurisprudence of the Human Rights Committee noted the intimate connection between the acts protected by articles 19 and 21 of the Covenant.³ Other rights that may be applicable in case of peaceful protests include, for instance, the right to freedom of association (art. 22) and to take part in the conduct of public affairs (art. 25). The Human Rights Committee, in its general comment No. 25 (1996), confirms that enjoyment of the

¹ The following States submitted information: Armenia, Australia, Azerbaijan, Bahrain, Costa Rica, Democratic Republic of the Congo, Estonia, Guatemala, Madagascar, Moldova, Mongolia, Montenegro, Morocco, Oman, Paraguay, Qatar, Romania, Russian Federation, Serbia, Slovenia, Spain and Switzerland.

Regional organizations and national human rights institutions that submitted information were the Commonwealth Secretariat; Organization for Security and Co-operation in Europe; Ombudsman of Bulgaria, Malawi Human Rights Commission, National Human Rights Commission of India, Human Rights Commission of New Zealand, Ombudsman of Panama, Office of the Human Rights Defender of Poland, National Human Rights Commission of Qatar, South African Human Rights Commission, Ombudsman of Venezuela (Bolivar Republic of).

A number of non-governmental organizations submitted information. To the extent that it relates to effective measures and best practices, such information has been included in the report. However, some submissions contained allegations of violations by States of human rights in the context of peaceful protests, such as disproportionate use of force or harassment of protestors. Such information has been transmitted to the Special Rapporteur on the rights to freedom of peaceful assembly and of association for further action, but has not been included in this report.

² Human Rights Council resolution 19/35 of 23 March 2012.

³ See for example, communication No. 1316/2004, *Mecheslav Gryb v. Belarus*, Views adopted on 26 October 2011, para. 9.5.

right to participate in the conduct of public affairs requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including, *inter alia*, freedom to hold peaceful demonstrations and meetings (para. 25).

5. The rights and freedoms provided for under articles 19 and 21 of the Covenant, however, are not absolute and may be subject to restrictions.⁴ Article 21 states that no restrictions may be placed on the exercise of the right to peaceful assembly other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of rights and freedoms of others. For instance, the Human Rights Committee has found that a requirement to notify the police of an intended demonstration in a public place six hours before its commencement may be compatible with the permitted limitations laid down in article 21.⁵

6. Similarly, under article 19, paragraph 3, the right to freedom of expression may be subject to restrictions only as provided by law and necessary for respect of the rights or reputations of others, or the protection of national security or of public order (*ordre public*) or of public health or morals. In its general comment No. 34 (2011), the Human Rights Committee further explains that any restrictions on the exercise of such freedoms “must conform to the strict tests of necessity and proportionality” and “be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated” (para. 22). In the context of an individual communication, the Committee pointed out that although general comment No. 34 refers to article 19, it also provides guidance with regard to elements of article 21.⁶

7. According to the Committee’s jurisprudence, it is up to the State party to show that restrictions on an author’s right under article 19, paragraph 3, of the Covenant are necessary and that even if a State party introduces a system aiming to strike a balance between an individual’s freedom to impart information and the general interest in maintaining public order in a certain area, such a system must not operate in a way that is incompatible with article 19 of the Covenant.⁷

III. Special procedures

8. In his initial report to the Human Rights Council, the Special Rapporteur on the rights to freedom of assembly and of association defined the term “assembly” as including demonstrations, strikes, processions, rallies or even sit-ins. He elaborated on the international legal framework applicable to the right to peaceful assembly, including restrictions on this right and the relationship between article 21 and other rights set out in the Covenant. The Special Rapporteur also stressed the obligation of Member States to both facilitate and protect peaceful assemblies, including through negotiation and mediation.⁸ He further noted that the right to freedom of assembly is also reflected in article 8 of the International Covenant on Economic, Social and Cultural Rights and in other international and regional instruments (para. 14).

⁴ See communication No. 1866/2009, *Chebotareva v. Russian Federation*, Views adopted on 26 March 2012, para. 9.2.

⁵ Communication No. 412/1990, *Kivenmaa v. Finland*, Views adopted on 31 March 1994, para. 9.2.

⁶ Communication No. 1790/2008, *Govsha, Syritsa and Mezyak v. Belarus*, Views adopted on 27 July 2012), para. 9.4.

⁷ Communication No. 1157/2003, *Coleman v. Australia*, Views adopted on 17 July 2006, para. 7.3.

⁸ A/HRC/20/27, paras. 24 and 89.

9. In their joint contribution to this report, the Special Rapporteurs on the rights to freedom of peaceful assembly and of association, on the right to freedom of opinion and expression, and on the situation of human rights defenders pointed out that States should recognize the positive role of peaceful protests as a means of strengthening human rights and democracy. They should guarantee the rights to freedom of peaceful assembly, freedom of association, and freedom of opinion and expression, which are essential components of democracy and indispensable to the full enjoyment of all human rights. In far too many instances, these rights have been unduly restricted or plainly denied in the context of peaceful protests.

10. Indeed, only protests that are peaceful are protected by international human rights law. An assembly should be deemed peaceful if its organizers and participants have peaceful intentions and do not use, advocate or incite violence; such features should be presumed. Assembly organizers should not be held liable for the violent behaviour committed by others. Instead, police have the duty to remove violent individuals from the crowd in order to allow protesters to exercise their basic rights to assemble and express themselves peacefully.

11. The organization of a protest should not be subject to prior authorization from the administrative authorities of the State, but at the most to a prior notification procedure, the rationale of which is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take appropriate measures to protect public safety and order and the rights and freedoms of protesters and other individuals affected by the protests. Spontaneous and simultaneous assemblies should be regulated by the same procedure and should also be protected. In any case, organizers should not be criminalized for not requesting an authorization.

12. When restricting the rights to freedoms of peaceful assembly, of opinion and expression, and of association, the least intrusive means of achieving the legitimate objective pursued by the authorities should always be given preference. Freedom to hold and participate in peaceful protests is to be considered the rule, and limitations thereto considered the exception. In this regard, the protection of the rights and freedoms of others should not be used as an excuse to limit the exercise of peaceful protests. Complete prohibition involving blanket bans on time and location does not comply with human rights in the context of peaceful protests, unless it is a measure of last resort, adopted to protect lives.

13. The dispersal of assemblies should only be a measure of last resort. Law enforcement authorities should not resort to force during peaceful assemblies, and they should ensure that force is only used on an exceptional basis.

14. According to article 4, paragraph 2, of the International Covenant on Civil and Political Rights, the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment are non-derogable rights. As such, it is imperative that States ensure prompt and adequate medical care for any person injured during a peaceful protest and that the injured person as well as his or her relatives are protected from any threat of reprisal.

15. No one should be criminalized or subjected to any threats or acts of violence, harassment, persecution, intimidation or reprisals for addressing human rights issues through peaceful protest or for reporting on human rights violations and abuses committed in the context of peaceful protests. The protection of women, especially women human rights defenders, must be guaranteed. Instances of gender-based violence occurring during demonstrations should be investigated and prosecuted as a matter of priority.

16. States must also ensure that anyone monitoring and reporting on violations and abuses occurring during peaceful protests, including journalists, community media workers,

other media professionals and bloggers, do so without fear of intimidation, legal and physical harassment and violence. In this regard, the State has an obligation to protect them.

17. States have the obligation to ensure that law enforcement officials are sufficiently trained and equipped, particularly with regard to crowd control and the use of force. In this regard, reference should be made to the comprehensive work carried out by the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and its Panel of Experts on Freedom of Peaceful Assembly.

18. Human rights defenders coalitions, national, regional and international networks for communication of information, monitoring groups and support groups that could provide a safe haven should be promoted and strengthened. These groups can provide protection for peaceful protesters as well as those monitoring peaceful protests.

19. Any reported excessive use of force or other human rights violations in the context of peaceful protests should be investigated and prosecuted promptly, impartially and in an independent manner, in order to bring perpetrators to justice. This not only entails guarantees that the violation be addressed, but also that it will not be repeated in the future. Where human rights in the context of peaceful protests are unduly restricted, the victim(s) should have the right to obtain redress and to fair and adequate compensation. Specific attention must be paid to victims belonging to the groups most at risk in this process.

20. In his contribution to this report, the Special Rapporteur on extrajudicial, summary or arbitrary executions made reference to article 6, paragraph 1, of the International Covenant on Civil and Political Rights regarding the right to life, and recalled that in its general comment No. 6 (1982) on the right to life, the Human Rights Committee considers that States parties should take measures to, inter alia, “prevent arbitrary killing by their own security forces.” In its view, the deprivation of life by the authorities of the State is a matter of utmost gravity, therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities (para. 3). Moreover, the Special Rapporteur referred to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,⁹ in particular principles 9, 12, 13 and 14, and to the Code of Conduct for Law Enforcement Officials¹⁰ which provides an interpretation of the limits on the conduct of law enforcement forces.

21. The Special Rapporteur also referred to his report to the seventeenth session of the Human Rights Council, where he concluded, based on a study of some 76 countries, that many domestic legal systems do not adhere to international standards in respect of the use of force during demonstrations (A/HRC/17/28, summary). The Special Rapporteur also highlighted several interconnected factors that shape a State’s response to protest and the eventual consequences. The recognition by the State of the right to peaceful assembly, both at the political and legal levels, is a crucial element. When the right to peaceful assembly is suppressed, there is a higher risk for demonstrations to escalate and turn violent. However, thorough respect by the State of the right to peaceful assembly offers the opportunity to defuse tensions and avoid negative consequences, such as potential loss of life.

22. In his report, the Special Rapporteur also underlines the need for greater codification of international law applicable to demonstrations, recommending that “the basic principles for managing demonstrations should be elaborated more clearly, so as to set out the international law standards applicable to demonstrations (non-violent and violent; legal and

⁹ Adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990.

¹⁰ Adopted by General Assembly resolution 34/169 of 17 December 1979.

illegal), with special reference to the use of (deadly) force by the police during demonstrations. [...] This process is important, not only in terms of providing clarity on the applicable standards, but also in order to raise awareness and solicit collaboration for a global law reform effort in respect of assembly rights” (para. 143).

23. Beyond legal frameworks, management of demonstrations, in practice, also requires knowledge of crowd behavior, adequate equipment – including a range of less-than-lethal weapons – and appropriate training of law enforcement officials, including in human rights. The latter play an important role in ensuring that responses to protests do not lead to escalated violence and human rights violations, including loss of life.

24. The Special Rapporteur on extrajudicial, summary or arbitrary executions also made reference to a so-called “negotiated management” approach to the process of policing assemblies. According to this approach, the task of the police is to protect rights and facilitate, rather than frustrate, demonstrations; they should help to diffuse tension and prevent a dangerous escalation of the situation. Several countries that follow this approach have also formalized the role of the so-called “safety triangle” during demonstrations, based on continuous communication and interaction between the organizers of the protest, the local or State authorities and the police, aimed at averting risks and ensuring smooth management of the assembly.

IV. National legislation, effective measures and best practices

A. Relevant national legislation

25. All States which provided input for this report indicated that the right to peaceful assembly, which in some cases also makes reference to peaceful protest or demonstration, is protected by the Constitution, specific legislation or both.

26. Costa Rica observed that peaceful protest is used as a means to gather support from civil society and the State on issues that affect those demonstrating, and is part of the exercise of an active and participatory democracy. According to its Constitutional Court, peaceful demonstrations are a manifestation of freedom of expression which enjoy judicial protection.¹¹

27. The Mongolian Constitution protects citizens’ freedom to peaceful demonstration and assemblies. Mongolia also has a Law on Procedures to Organize Demonstrations and Assemblies.

28. Switzerland indicated that the freedom to protest is essential in a State based on the freedom of its citizens, and that this right is protected through provisions on freedom of opinion and information, as well as freedom of association in the federal Constitution.

29. Spain noted that its Constitution recognizes the right of assembly and peaceful protest without use of any weapons. It added that peaceful protest is legally characterized as a collective demonstration of the freedom of expression by means of a temporary assembly of persons whose purpose is to exchange or expose certain ideas, defend specific interests or publicize problems or demands. Spain also stressed the close relationship in law between the right of peaceful assembly and the right of freedom of expression.¹²

¹¹ Costa Rica, Constitutional Court, judgement No. 03020 (2000).

¹² Spain, Constitutional Court, sentencia 96/2010 of 15 November 2010, FJ 3.

30. Similarly, the constitutions of Bulgaria, Guatemala, Panama, Paraguay and Venezuela (Bolivian Republic of) protect the right to peaceful assembly and demonstration, while explicitly stressing that this right should be exercised without recourse to “arms”. The constitutions of Qatar and Bahrain protect the right to peaceful assembly, and both States have also adopted national legislation banning the use of arms during assemblies.

31. Serbia indicated that the right to peaceful assembly is laid down in its Constitution and that during peaceful protests, citizens’ rights to freedom of thought and expression are protected. Mauritius stated that peaceful protests are protected by two different constitutional provisions: the right to freedom of expression and the right to freedom of assembly and association.

32. The Estonian Constitution states that everyone has the right, without prior permission, to assemble peacefully and hold meetings. However, it also provides for restriction to this right pursuant to a procedure provided by law to ensure national security, public order, morals, traffic safety and the safety of participants in a meeting, or to prevent the spread of an infectious disease.¹³

33. Guatemala reported that the right to peaceful assembly may be restricted in certain cases established in the Law on Public Order, taking into account the provisions of article 21 of the International Covenant on Civil and Political Rights. In order to ensure peace, security and the effective implementation of human rights, the Civil Security Forces Support Act regulates the support provided by the Guatemalan armed forces to civil security forces when working to prevent and combat organized and minor crimes.¹⁴ In November 2012, a Protocol on Inter-agency Action: Military Support to Civil Security Forces, specifying the legal framework for assistance, cooperation and coordination between the Guatemalan armed and civil security forces, was adopted.¹⁵

B. Measures and best practices

Prior notification and authorization

34. While some States do not require any prior notification or prior authorization to hold peaceful demonstrations, others may require one or the other. In certain situations, prior notification or authorization is only required if the organizers intend to use public roads or public areas, or when special facilities, such as stands or barriers, may have to be erected for the demonstration.

35. Similarly, States diverge on approaches to spontaneous peaceful protests. Some States which require prior notification or authorization may ban such demonstrations, others may allow them, or others still may allow the demonstration even if it contravenes legal requirements regarding prior notification or authorization.

36. In Azerbaijan, notification must include the name, purpose, place and date of the event, the approximate number of participants, and if a street march is held, its proposed route, including starting place, distance and destination, as well as the name and contact information of the organizers. However, spontaneous demonstrations or protests do not require written notification, but can be restricted or stopped.¹⁶

¹³ Estonia, Constitution (1992), art. 47.

¹⁴ Guatemala, Act on the Support to Civil Security Forces, Decree No. 40-2000 of 16 June 2000.

¹⁵ Guatemala, Protocol on Inter-agency Action: Military Support to Civil Security Forces, Government order No. 285-2012 of 6 November 2012.

¹⁶ Azerbaijan, Law on Freedom of Assemblies of 22 February 2008, arts. 3 and 12.

37. In Estonia, the Public Meetings Act states that an organized public meeting has to be registered at least four working days prior to the meeting at the rural municipality or city government, when it is necessary to redirect traffic, erect a tent, stage, bleacher or any other large-scale construction, or use sound or lighting equipment. All other public meetings have to be registered with the police at least two hours prior to the meeting. Public meetings cannot be held in certain places, including, inter alia, at border checkpoints or closer than 300 metres to the border, on Estonian defence forces territory or closer than 50 metres to defence forces territory, on bridges, the railroad, in a mine, under high-voltage power lines, an area where infectious disease is spreading or that is dangerous to persons.

38. The Democratic Republic of the Congo indicated that all public demonstrations must obtain prior authorization from the competent administrative authorities, as State authorities have the obligation to ensure security for protestors and maintain public order. The Democratic Republic of the Congo further indicated that although spontaneous demonstrations are illegal, they are nevertheless subject to the protection of State authorities in order to maintain public order.

39. The Republic of Moldova indicated that, further to legislative amendments in 2008, it now has a notification procedure for assemblies, rather than an authorization system. According to the Law on Assemblies, any assembly with fewer than 50 participants can take place without prior notification. In the event that the assembly involves more than 50 people, the organizers must notify the local authorities five days prior to the event in order to ensure that no other assemblies have been organized in the same place at the same time. The Republic of Moldova indicated that the change from an authorization to a notification system has led to an increase in the number of assemblies held and the number of individuals exercising their right to freedom of peaceful assembly.

40. In Qatar, Law No. 18/2004 on public meetings and demonstrations stipulates that organizers of meetings or peaceful assemblies must obtain a licence from the Director General of Public Security by submitting a written request seven days prior to the proposed date of the event. The application is considered rejected if approval is not given three days prior to the proposed date of the event. The organizers can request a review of the refusal by the Ministry of Interior within 24 hours. If the Ministry does not respond to the review request, it should be considered a rejection. The National Human Rights Commission of Qatar stated, however, that it has observed spontaneous peaceful protests by labourers protesting against delays in payment of their salaries by companies. The Ministry of Interior placed no restrictions on the protests, and only posted officers at the site of the protests to ensure they were peaceful. In Oman, an administrative coordination unit between relevant public authorities has been mandated to receive requests for authorization to hold peaceful protests and provides technical advice on these requests to the unit chief.

41. In Serbia, the Law on the Assembly of Citizens requires the organizer to submit an application to hold a public assembly to the Ministry of the Interior at least 48 hours prior to said assembly, and five days, in the case of movement, for example, a march by participants.

42. Spain stated that according to its Constitution, the holding of a peaceful assembly does not require any prior authorization.¹⁷ Organic Law 9/1983 regulates assemblies and demonstrations held in places where there is public transit. Organizers must inform the competent public authorities in writing a minimum of 10 days in advance, except for urgent reasons, in which case the authorities may be informed in writing a minimum of 24 hours in advance. The competent public authorities may prohibit a demonstration or propose

¹⁷ Spain, Constitution (1978), art. 21.

modification of the itinerary or the time of the public gathering, if it considers that the event may pose a threat to public order or danger to persons or property. The decision of the public authorities can be appealed before an administrative body within 48 hours in the presence of all parties and prior to the date of the planned event. The decision of the administrative tribunal can be appealed before the Constitutional Court.

43. In Switzerland, the right to demonstrate in public spaces derives from the rights to freedom of expression and freedom of assembly as protected under the federal Constitution.¹⁸ However, demonstrations may be subject to prior authorization, if provided for by law, to coordinate the use of public areas and to guarantee public safety. Management of public areas falls within the competence of the cantonal and communal authorities. In the cantons of Bern, Geneva and Graubünden, the organizers of demonstrations are required to obtain prior authorization to hold demonstrations. In practice, however, the procedure functions like a notification system, as demonstrations are almost never prohibited. Spontaneous demonstrations are not subject to a prior authorization procedure in Switzerland. Refusal by the competent authorities to grant authorization for a peaceful protest may be appealed before the first instance jurisdiction at the commune level; the Federal Tribunal would be the final national court to hear an appeal.

44. The Commonwealth Secretariat highlighted that “authorities must be notified of a proposed demonstration or protest unless the circumstances are such that prior notification is not possible; authorities have no authority to stop a demonstration or protest, but may stipulate reasonable conditions to safeguard against potential violence; prohibition is a last resort, where there is a genuine threat of violence if the event were to take place; judicial review is to be made available against decisions of the authorities; organizers are to be made aware by the authorities of the conditions of a demonstration or protest and their liability for any damages caused.”¹⁹

45. The European Court of Human Rights has placed limitations on the dissolution of peaceful demonstrations spontaneously organized in response to events that would foreseeably result in demonstrations. The Court said 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 conducts by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.”²⁰ Moreover, the European Court of Human Rights determined that the absence of an effective appeals procedure against a decision to forbid an assembly prior to the proposed date of said assembly is a violation of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms.²¹

46. The Defending Dissent Foundation, based in the United States of America, argued that notice or permits should not be required for assemblies of less than 50 people, or when the protest takes place on public sidewalks, or when the assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event. Lawyers for Constitutional Rights and Freedoms (JURIX) advocates that ordinary participants of

¹⁸ Switzerland, Federal Constitution of the Swiss Confederation (1999), arts. 16 and 22.

¹⁹ Commonwealth Secretariat, *Freedom of Expression, Association and Assembly*, Best Practice Series (London, 2003), pp. 21-22.

²⁰ European Court of Human Rights (ECtHR), *Bukta and others v. Hungary*, Application No. 25691/04, judgement of 17 July 2007, para. 36.

²¹ *Ibid.*, *Baczowski and others v. Poland*, Application No. 1543/06, judgement of 3 May 2007. The Office of the Human Rights Defender in Poland was involved in the case from the outset, arguing that the introduction of a requirement to obtain permission for an assembly on a public road is a violation of the freedom of assembly.

peaceful assemblies should not be detained even in cases when regulatory authorities and organizers do not reach an agreement about the time, place and manner of the event. Peaceful protests should be allowed to be held in front of their intended audience and with maximum publicity. The procedure for obtaining the consent of the regulatory authorities, including with respect to the time and place of the protest, should not be used as a tool to frustrate the purpose of such demonstrations.

47. With regard to protests notified to the Copenhagen police, the Danish Institute for Human Rights indicated that the police initiates dialogue with the organizers prior to the scheduled date to ensure the protest will proceed peacefully. The Zimbabwe Human Rights NGO Forum supports legal reform efforts to transfer the power to ban demonstrations from the police to the courts, and to remove the obligation for demonstrators to carry identity cards.

48. In their jurisprudence, regional courts have addressed the issue as to whether peaceful protests can be restricted if they take place in public areas or on public roads that are used intensively. The argument that closing public roads for demonstrations would cause undue inconvenience to others was rejected by the European Court of Human Rights. The Court stated that “any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic, and that it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by article 11 of the Convention is not to be deprived of all substance.”²² The European Court of Justice reached a similar conclusion in a case where a protest on a major transit route through the Alps resulted in the effective closure of the motorway for almost 30 hours.²³ The Inter-American Commission on Human Rights (IACHR) also arrived at a similar conclusion.²⁴

Role of authorities, in particular the police, during peaceful protests

49. The Danish Institute for Human Rights reported that the Copenhagen police has initiated social media communication as of 2012, and updates protestors and participants in public events via Facebook and Twitter with information related to the protest or event. Australia reported that police functions in the context of peaceful protests are conducted in a manner that respects human rights and freedoms.

50. Montenegro stated that the police maintains communication and cooperates with the organizers of a peaceful protest during the event, as well as with other entities involved, such as agencies providing physical or health protection or the media. Madagascar stressed the role of the Ministry of Internal Security and the Police in guaranteeing the free exercise of constitutionally guaranteed fundamental freedoms, including peaceful protest. Law enforcement forces ensure compliance with rules regarding peaceful protests, while maintaining public order before, during and after protests.

51. The Australian Castan Centre for Human Rights Law argued that police should wear identification at all times so that there may be some recourse if they use disproportionate force. It underlined that police should be given guidance in appropriate crowd control mechanisms. The Centre raised the issue of police response to civil disobedience. Recalling the historical importance of civil disobedience as a form of protest, even though it may not

²² ECtHR, *Sergey Kuznetsov v. Russia*, Application No. 10877/04, judgement of 23 October 2008, para. 44.

²³ European Court of Justice, *Eugen Schmidberger v. Republic of Austria*, Case C-112/00, judgement of 12 June 2003.

²⁴ Organization of American States, IACHR, *Report on Citizen Security and Human Rights*, 31 December 2009 (OEA/Ser.L/V/II), para. 193.

be protected under either domestic or international human rights law, the Centre advocates that punishment for such acts should be proportionate, and that protestors should not be held up as examples.

52. The Spanish Fundación Intervida emphasized that persons under 18 years of age must receive particular protection against violence and inhuman or degrading treatment in the context of peaceful demonstrations.

53. The Defending Dissent Foundation considers that the role of the police at peaceful protests should be crowd management and that communication and voluntary compliance should be emphasized. All law enforcement personnel should wear or display visible identification and plainclothes or undercover officers or informants should not be placed in a crowd. The police presence should not be disproportionate to the size of the crowd, and the police should not be armed with lethal weapons. Horses should not be used for crowd control, the police should not photograph or videotape peaceful protestors, and should be prohibited from making pre-emptive arrests and dispersals. Moreover, law enforcement officers should document all arrests and promptly process them; arrested persons should be made aware of their legal rights. It advocated that tear gas, pepper spray or other “less than lethal” weapons should not be used on peaceful demonstrators.

54. The Ombudsman of Panama highlighted the importance of dialogue and consultation with all parties involved, which contribute to the protection of human rights during peaceful protests. Oman also emphasized the importance of communication with public authorities during protests.

55. Various NGOs also raised concerns about the misuse of less-than-lethal weapons. Specific concerns were raised by Physicians for Human Rights and the Castan Centre for Human Rights Law with respect to certain forms of non-lethal weapons used to control demonstrations, including guns with rubber bullets, tear gas, birdshot and taser guns. Physicians for Human Rights recommended that States ensure access to medical care for any injured protestor or security officer, and protect the medical neutrality of health-care professionals who treat injured protestors or security officers.

56. The Network for Police Monitoring (Netpol) addressed the police tactic of containment, or “kettling,” of persons, including both protestors and bystanders, for a period of several hours, as a crowd-containment measure. The European Court of Human Rights found that the use of such containment measures was not a violation of the Convention when it is necessary to avert “a real risk of serious injury or damage,” and where it is the “least intrusive and most effective means to be applied.”²⁵ While accepting that the police tactic of containment is legal in situations where there is a risk of serious violence, Netpol acknowledged that the practice is frequently used as a response to spontaneous and unauthorized peaceful protests, and expressed concern that the practice is not used only for the narrow purposes for which it is intended. Netpol further alleged that police tactics such as containment and stop-and-search are frequently used by police to collect personal data on protestors. It argued that the gathering and processing of such data does not have an adequate foundation in law and that it has a chilling effect on participation in protest activities.

57. The Danish Institute for Human Rights raised the issue of the treatment of large numbers of persons provisionally detained during protest activities in Denmark, highlighting one case in which the detainees did not have access to toilet facilities and were left on the cold pavement for several hours.

²⁵ EctHR (Grand Chamber), *Austin and others v. United Kingdom*, Applications Nos. 39692/09, 40713/09, and 41008/09, judgement of 15 March 2012, paras. 59 and 66.

58. The Commonwealth Secretariat²⁶ advocates that police present during protests should apply the principles of proportionality, legality, accountability and necessity (PLAN). The Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed the view that organizers of protests should not incur any financial charges for the provision of public services during an assembly, nor should assembly organizers and participants be considered responsible (or held liable) for the unlawful conduct of others or made responsible for the maintenance of public order.²⁷

Investigations of violence and accountability

59. The National Human Rights Commission of India and the South African Human Rights Commission both indicated that their role is to investigate and make findings and recommendations when protests result in serious violence, including deaths. They also indicated that their institutions should engage in public dialogue on the issues that lead to demonstrations and human rights issues arising from protest activities.

60. The Malawi Human Rights Commission stated that it had conducted an investigation into demonstrations in July 2011 that had turned violent and resulted in the death of 19 people as well as destruction of property. The Ombudsman of Venezuela (Bolivar Republic of) indicated that it tries to mediate conflicts arising from peaceful protests and makes recommendations to the competent bodies of the State for possible action.

61. Physicians for Human Rights urged States to establish fair and transparent accountability mechanisms for security forces who have engaged in the excessive use of force against peaceful protesters, and to conduct impartial and independent investigations of any allegations of harassment or intimidation of protestors. Turkey reported that where the authorities find that a disproportionate use of force is used by security forces during peaceful protests or where such complaints are received, the Ministry of the Interior assigns inspectors to investigate such incidents, in accordance with its “zero tolerance policy towards torture and ill-treatment.”

62. The Russian Federation referred to two bodies created in recent years, which are functioning successfully in identifying human rights violations, including in the context of peaceful protest. Public oversight councils have been established and they communicate cases of serious abuses of human rights that are also the object of attention by civil society organizations. The Public Council of the Russian Ministry of Internal Affairs comprises representatives of the human rights community and addresses cases of human rights abuses. Oman reported that its National Human Rights Institution is monitoring and providing advice on all issues related to human rights violations, including violations of human rights in the context of peaceful protests.

63. Greenpeace addressed the issue of civil disobedience, which it characterizes as deliberate non-compliance with a legal requirement. It argued that legitimate and constructive protest should not always be subject to legal sanction, even if it violates the law. It referred to a case where 46 Greenpeace activists had intentionally violated the law to illustrate that security was inadequate at a nuclear facility in Australia; they were initially convicted of trespass, but on appeal, the convictions were set aside. The presiding judge stated that “[...] it was not the case, in my view, that the objectives and motives of the defendants could have been achieved by demonstrating at the front gate. As has already

²⁶ Commonwealth Secretariat, *Commonwealth Manual on Human Rights Training for Police* (London, 2006).

²⁷ See A/HRC/20/27, para. 31.

been noted [...], one of the major objectives and motives of the appellants was that the woeful security inherent in the facility should be demonstrated in graphic terms.”²⁸

Good practices contributing to impartiality of the State

64. The impartiality of the State has been identified by the National Human Rights Commission of India as being of central importance in the exercise of the right of peaceful protest. The Commission indicated how, in a variety of situations, a lack of impartiality could adversely affect the right of peaceful protest. For example, the government in power may encourage and even support pro-government demonstrations, but forbid, restrict or disrupt peaceful protest by the political opposition and individuals or groups dissatisfied with government policies and practices. A State may also target persons supporting subjects that are viewed as controversial or incompatible with mainstream values or beliefs, or inflict heavy fines on organizers, participants or opposition leaders who participate in such protests, or subject them to detention or imprisonment. In extreme cases, governments may commit serious human rights violations such as torture or ill treatment of persons in custody, or try to obstruct medical care to those who are injured.

65. A variety of good practices can contribute to addressing lack of impartiality by the State. For instance, national human rights institutions can conduct investigations into a State’s impartiality in a given instance and publicly report on their findings. The South African Human Rights Commission, the Office of the Human Rights Defender of Poland and the Office of the Ombudsman of Bulgaria reported that they play a role in monitoring protests and engaging in dialogue with relevant stakeholders.

66. Adverse decisions of administrative authorities, prohibiting or restricting peaceful protest, should be appealable before independent and impartial bodies, including courts. Media organizations should be allowed to carry out their work freely and to report without restrictions on demonstrations. NGOs and human right defenders have a role to play in monitoring peaceful assemblies and their policing,²⁹ and observers from diplomatic missions, regional and international organizations may also play a role in monitoring demonstrations when the impartiality of the State is put into question. In this respect, OSCE/ODIHR’s *Handbook on Monitoring Freedom of Peaceful Assembly* (2011) can be used to build capacity.

The role of the media

67. Reporters Without Borders stated that the media play a key role during peaceful protests in promoting the full and effective exercise of the right to freedom of peaceful assembly. It underlined that media coverage of demonstrations and public gatherings represented one of the principal reasons for exactions against journalists, and noted an increase in aggressions against journalists in 2011. Detention, questioning or convocation by authorities have been used to restrain the free flow of information, as well as violence, destruction of material, confiscation of recordings, assaults on media offices, expulsions or denial of visas.

68. It recommended that media coverage be recognized as an element of protection of human rights in the context of peaceful protests; that the right to information should not be conditioned on the holding of a press card or press accreditation; that States respect the right to information and recognize the right of journalists to have access to places of public protest, to film and interview; that they have respect for the physical security of journalists

²⁸ New South Wales District Court, *Regina v. Kirkwood et al.*, DCZ EF-C, judgement of 15 May 2002, (unpublished), p. 5.

²⁹ See A/HRC/20/27, para. 50.

as well as their material and for fundamental principles, such as the confidentiality of their sources. States should prohibit the refusal to issue visas or to give accreditation to journalists, as well as their expulsion; police forces should respect the neutrality of journalists and should receive training on respect for international norms on freedom of information and respect for the work of the media during demonstrations. In addition, the State should effectively combat impunity for exaction against journalists by systematically prosecuting those responsible for criminal acts and imposing disciplinary measures.

69. The organization ARTICLE 19 also underlined the role of the media, arguing that attacks on journalists and “citizen journalists” covering assemblies should be regarded as a violation of the right to freedom of peaceful assembly as well as the right to freedom of expression. It cited the judgement of the Inter-American Court of Human Rights in a case concerning an attack on a video journalist who was attempting to film a demonstration. The Court concluded that disseminating information about such protests enables those who see it “to observe and verify whether, during the demonstration, the members of the armed forces were performing their duties correctly, with an appropriate use of force.”³⁰

New technologies

70. New technologies, such as the Internet, e-mail, text messaging, Twitter, Facebook, as well as mobile phones, have changed the way people peacefully protest, and have also challenged traditional notions about what is a peaceful assembly.³¹ ARTICLE 19 noted that in 2010, the United States of America Secretary of State analogized online platforms as the modern town square for the purpose of assemblies and argued that the right to freedom of peaceful assembly applies to online protests.

71. The Association for Progressive Communications (APC) observed that new forms of online protests are not well covered by national legislation and human rights law. Legally permitted online protest remains to be defined. APC referred to distributed denial-of-service (DDoS) attacks, an often-used form of online protest. DDoS attacks involve the continuous flooding of a website by many users with useless information, which can cause the website to slow down or go offline due to server overload. APC noted that a DDoS attack can be an act of protest and could be considered the online version of a sit-in. A DDoS attack will usually make a website unavailable for a short time until the attacks cease – similar to protesters outside a building stopping business activities for a limited period until the protest ceases. Such attacks alone do not generally compromise the security of a site or allow for stealing information, unless the target site is hacked and exploited while it is weakened. A German court ruled that DDoS attacks could, depending on the purpose of the attack, be considered a legitimate form of protest, and not a crime. APC stated that the law needed to draw a distinction between DDoS attacks for protest activities and attacks conducted by “botnets” controlled by hackers which harm both their targets and the unwilling owners of zombie machines used in botnet attacks. APC said that people using DDoS tools should be assessed differently from those using botnets.

³⁰ Inter-American Court of Human Rights, *Vélez Restrepo and family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. judgement of September 3, 2012. Series C No. 248.

³¹ See A/HRC/20/27, para. 32. The Special Rapporteur also underlined that human rights in the context of peaceful protests should apply both offline and online, and agreed with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression that all States should ensure that Internet access is maintained at all times, including during times of political unrest, (para. 84(k)).

Training and guidance

72. A number of States³² and national human rights institutions indicated that they provide human rights training to administrative authorities and/or the police as a measure to promote and protect human rights in the context of peaceful protests.

73. Azerbaijan mentioned that its training programmes included such topics as the role of the police during demonstrations; demonstrations as manifestation of the principle of democracy; cooperation among organizers and police; chain police activity; strategies for decreasing tension; managing various gatherings; managing mass disorder; regulating roads and other places; and respect for and protection of human dignity.

74. Paraguay reported that the *Manual on the Use of Force*, issued by the National Police in 2011, was an important action to promote and protect the right of peaceful protest. Slovenia indicated that it provides training to the police with the objective of giving law enforcement officers an advanced knowledge of constitutional law and human rights, including human rights protection when police powers are used. It also has a special training programme entitled “Awareness of stereotypes, overcoming prejudice and prevention of discrimination in a multi-cultural society.”

75. Turkey stated that the Directive on the Procedure and Principles Relating to the Conduct of Personnel in Charge during Assembly and Demonstration Marches was adopted in 2011 with a view to providing nationwide uniformity, including with respect to the degree of force used to ensure proportionality.

Research activities

76. Hungary’s Office of the Commissioner for Fundamental Rights has undertaken a project on the freedom of assembly which includes an investigation of how law enforcement handles reports and how far the measures taken during events meet the requirements set by the Constitution and applicable legal regulations. Since its launch, more than 150 events have been investigated. It found that demonstrations are more often crossing national boundaries, and demonstration tactics are changing and developing. Based on the conclusion that police expertise needed to become international, a project was initiated with 20 partner organizations from 11 countries, including law enforcement organs, research and educational institutions, the national police and the Commissioner for Fundamental Rights.

V. Conclusions

77. Peaceful protests are a fundamental aspect of a vibrant democracy. States should recognize the positive role of peaceful protests as a means to strengthen human rights and democracy. They should guarantee the rights to freedom of peaceful assembly, freedom of association and freedom of opinion and expression, which are essential components of democracy and indispensable to the full enjoyment of all human rights.

78. The promotion and protection of human rights in the context of peaceful protests require not only an adequate legal framework, but also continuous efforts for their effective implementation. Dialogue between protest organizers, administrative authorities and the police, as well as human rights training programmes for police

³² Armenia, Azerbaijan, Bulgaria, Estonia, India, Madagascar, Mauritius, Moldova, Montenegro, Morocco, Romania, Russian Federation, Slovenia, Spain and Turkey.

forces, including on the use of force during protests, can also contribute to the promotion and protection of human rights linked to peaceful protest.
