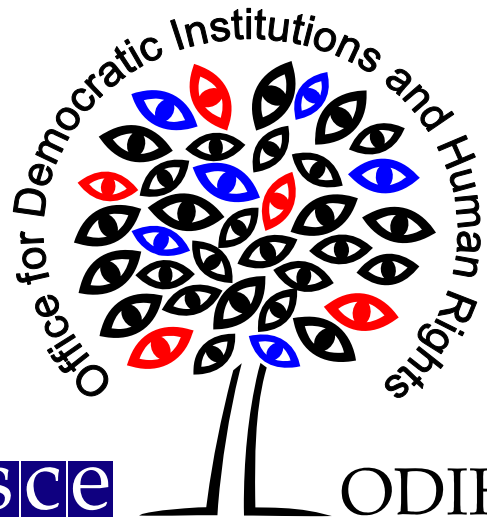


GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY (2nd edition)



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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Foreword

The right to assemble peacefully, together with freedom of expression and freedom of association, rests at the core of any functioning democratic system. The right to freedom of assembly, as well as its limits, are clearly stated in Article 11 of the European Convention on Human Rights and in the OSCE's 1990 Copenhagen Document. Most national constitutions and fundamental laws echo these documents or establish similar principles.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's Commission for Democracy through Law (Venice Commission) have been providing legislative support to OSCE participating states and Council of Europe members to assist them in ensuring that their legislation on freedom of peaceful assembly complies with European and international standards and OSCE commitments. The development of these Guidelines is a cornerstone of this assistance, adding to ODIHR's LegislativeOnline.org database, where lawmakers can obtain good examples from other countries' legislation that can help them frame their own choices.

Existing international standards certainly offer a clear general framework; however, too little guidance is available to legislators and executive branches on how the exercise of freedom of peaceful assembly may be regulated in practice at the local and national level. Good laws, by themselves, cannot mechanically generate improvements in practice. But even at the legislative level, in a number of cases an inclination towards a so-called command-and-control approach can be identified, as reflected in more regulations, more control and more bureaucratic hurdles. Public demonstrations and rallies, for instance, are not always seen as part of the routine that makes up a pluralistic democracy. In some states, freedom of assembly is still regulated in a way that often results in its de facto denial.

Approaches to regulating the right to freedom of assembly vary greatly across Europe and the OSCE area. Legislators in different countries have chosen a variety of models. These stretch from adopting specific laws to govern the exercise of this fundamental right to introducing provisions across a diverse array of relevant legislation, such as, most importantly, acts pertaining to the police and general administrative law. This prompted ODIHR, together with the Venice Commission, to develop Guidelines aimed at formulating thresholds that should be met by national authorities in their regulation of the right.

This document is the second, revised edition of the ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, which were first published in 2007. The Guidelines are designed for practitioners in many sectors, i.e., drafters of legislation and those implementing it, as well as those affected by the implementation. Recognizing the great diversity of country contexts, the Guidelines do not attempt to provide ready-made solutions but, rather, to clarify key issues and discuss possible ways to address them. Even when the legislative framework is in compliance with European and international standards and OSCE commitments, challenges to the practical implementation of those laws persist in the region.

The Guidelines offer a practical toolkit for legislators and practitioners responsible for implementing laws by drawing on good-practice examples from national legislations in European and OSCE participating States and the case-law of the ECtHR to illustrate the various legislative options used to regulate issues pertaining to the freedom of assembly. The Guidelines are a living instrument. They demarcate parameters for implementation consistent with international standards and illustrate key principles with examples of good practice from

individual states. We are pleased to publish these Guidelines and hope they will find many users – drafters of legislation, law-enforcement personnel, municipal-government officials, judges, academics and members of civic organizations – and count on them to contribute their expertise and experience in order to further enrich this document.

Ambassador Janez Lenarčič, Director, OSCE Office for Democratic Institutions and Human Rights (ODIHR)

Gianni Buquicchio, President, Venice Commission of the Council of Europe

Introduction

This second edition of the Guidelines on Freedom of Peaceful Assembly, together with the Explanatory Notes, was prepared by the Panel of Experts on Freedom of Assembly of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in consultation with the Council of Europe's European Commission for Democracy through Law (Venice Commission).¹ Though set apart here in Section B, the Explanatory Notes constitute an integral part of the Guidelines found in Section A, and should be read in concert with them. The second edition of the Guidelines updates the first, published in 2007, in the light of new case law and by drawing on comments and feedback received by the Panel.

Work on these Guidelines began in 2005, and the initial Guidelines and Explanatory Notes drafted by ODIHR were developed further over the course of four roundtable sessions held in 2006 in Tbilisi, Belgrade, Almaty and Warsaw, respectively. These roundtable sessions brought together about 150 participants from 29 OSCE participating States. The participants came from a diverse range of fields and backgrounds and included law-enforcement officers and representatives of human rights NGOs, government ministers and organizers of assemblies, academics and practicing lawyers. The document benefitted significantly from this wealth of hands-on experience in a broad range of contexts. The first edition of the Guidelines has since provided a basis for a number of Legal Opinions and Legislative Guidelines prepared jointly by the ODIHR Panel and the Venice Commission.² Reference to the Guidelines has also been made in case law of the European Court of Human Rights³ and by UN bodies.⁴

The Guidelines and Explanatory Notes are based on international and regional treaties and other documents related to the protection of human rights,⁵ on evolving state practice (as reflected, *inter alia*, in the judgments of domestic courts),⁶ and on general principles of law recognized by the community of nations. They set out a clear minimum baseline in relation to these standards, thereby establishing a threshold that must be met by national authorities in their regulation of freedom of peaceful assembly. This document, however, does not attempt to codify these standards or summarize the relevant case law. Instead, it is illustrated by examples of good practice (measures that have proven successful across a number of jurisdictions or that have demonstrably helped ensure that the freedom to assemble is accorded adequate protection).

The legal regulation of freedom of assembly is a complex matter. A wide range of issues, both procedural and substantive, must be considered so as to best facilitate its enjoyment. Moreover, the approach to regulation varies greatly among OSCE participating States – from the adoption of a single, consolidated law, to the incorporation of provisions concerning peaceful assemblies in a number of different laws (including those governing the powers of law-enforcement agencies, criminal and administrative codes, anti-terrorism legislation and election laws). Recognizing these differences and the great diversity of country contexts involved (particularly in relation to democratic traditions, the rule of law and the independence of the judiciary), this document does not attempt to provide ready-made solutions. It is neither possible nor desirable to draft a single, transferable “model law” that can be adopted by all OSCE participating States. Rather, the Guidelines and the Explanatory Notes seek to clarify key issues and discuss possible ways to address them.

In regulating freedom of assembly, well-drafted legislation is vital in framing the discretion afforded to the authorities.⁷ This requires that governments and those involved in the drafting of legislation consult with the individuals and groups affected by new laws or amendments to existing ones (including local human rights organizations) as an integral part of the drafting process. Often, however, it is not the text of the law that is at issue but its implementation. Therefore, while these Guidelines and Explanatory Notes will be of benefit to those involved in the drafting of legislation pertaining to freedom of assembly, they are also aimed at those responsible for implementing such legislation (the relevant administrative and law-enforcement authorities) and those affected by its implementation. The Guidelines and Explanatory Notes

are, therefore, primarily addressed to practitioners – drafters of legislation, politicians, legal professionals, police officers and other law-enforcement personnel, local officials, trade unionists, the organizers of and participants in assemblies, NGOs, civil society organizations and those involved in monitoring both freedom of assembly and police practices.

The Explanatory Notes in Section B are not only essential to a proper understanding of Guidelines in Section A, but also provide examples of good practice, which is what makes this document special. Part I of Section B (chapters 1-5) emphasizes the importance of freedom of assembly and sketches its parameters. It outlines the importance of freedom of assembly (chapter 1), identifies core issues in the regulation of freedom of assembly (chapter 2), sets out a number of guiding principles that should govern its regulation (chapter 3), examines the legitimate grounds for, and types of, restriction (chapter 4), and examines relevant procedural issues (chapter 5). Part II (chapters 6-8) is more practically focused and examines the implementation of freedom of assembly legislation. It covers the policing of public assemblies (chapter 6), the responsibilities of assembly organizers (chapter 7) and the role of the media and independent monitors (chapter 8). Appendix A provides a summary description of a number of regional and international bodies concerned with the enforcement of international human rights standards, while Appendix B provides a list of cases cited. A Glossary of Terms defining the major concepts used in both the Guidelines and Explanatory Notes (with English-Russian translation) is contained in Appendix C.

These Guidelines and Explanatory Notes can be downloaded from the ODIHR and Venice Commission websites, as well as from Legislationline.org, ODIHR's online legislative database (www.legislationline.org), where national legislation on public assemblies and other related legal materials can also be found.

This second edition of the Guidelines and the Explanatory Notes remains a living document, so ODIHR and the Venice Commission continue to welcome comments and suggestions, which should be addressed to assembly@odhr.pl.

SECTION A – GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY

1. Freedom of Peaceful Assembly

1.1 Freedom of peaceful assembly is a fundamental human right that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. Assemblies may serve many purposes, including the expression of diverse, unpopular or minority opinions. The right can be an important strand in the maintenance and development of culture, such as in the preservation of minority identities. The protection of the freedom to peacefully assemble is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices or policies can exist peacefully together.

1.2 Definition of assembly. For the purposes of the Guidelines, an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.

This definition recognizes that, although particular forms of assembly may raise specific regulatory issues, all types of peaceful assembly – both static and moving assemblies, as well as those that take place on publicly or privately owned premises or in enclosed structures – deserve protection.

1.3 Only peaceful assemblies are protected. An assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent. The term “peaceful” should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.

2. Guiding Principles

2.1 The presumption in favour of holding assemblies. As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden by law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of this freedom should be clearly and explicitly established in law.

2.2 The state’s positive obligation to facilitate and protect peaceful assembly. It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation. In particular, the state should always seek to facilitate and protect public assemblies at the organizers’ preferred location and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded.

2.3 Legality. Any restrictions imposed must have a formal basis in law and be in conformity with the European Convention on Human Rights and other international human rights instruments. To this end, well-drafted legislation is vital in framing the discretion afforded to the authorities. The law itself must be compatible with international human rights standards and be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, as well as the likely consequences of any such breaches.

2.4 Proportionality. Any restrictions imposed on freedom of assembly must be proportional. The least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.

The principle of proportionality requires that authorities do not routinely impose restrictions that would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city.

A blanket application of legal restrictions tends to be over-inclusive and, thus, will fail the proportionality test, because no consideration has been given to the specific circumstances of the case.

- 2.5 Non-discrimination.** Freedom of peaceful assembly is to be enjoyed equally by everyone. In regulating freedom of assembly the relevant authorities must not discriminate against any individual or group on any grounds.

The freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies; to members of minority ethnic, national, sexual and religious groups; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); to children, women and men; to law-enforcement personnel; and to persons without full legal capacity, including persons with mental illnesses.

- 2.6 Good administration.** The public should be informed which body is responsible for taking decisions about the regulation of freedom of assembly, and this must be clearly stated in law. The regulatory authority should ensure that the general public has adequate access to reliable information about its procedures and operation. Organizers of public assemblies and those whose rights and freedoms will be directly affected by an assembly should have the opportunity to make oral and written representations directly to the regulatory authority. The regulatory process should enable the fair and objective assessment of all available information. Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizer, with an explanation of the reason for each restriction. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the date provided in the notification for the assembly.

- 2.7 The liability of the regulatory authority.** The regulatory authorities must comply with their legal obligations and should be accountable for any failure – procedural or substantive – to do so. Liability should be gauged according to the relevant principles of administrative law and judicial review concerning the misuse of public power.

3. Restrictions on Freedom of Assembly

- 3.1 Legitimate grounds for restriction.** The legitimate grounds for restriction are prescribed in international and regional human rights instruments. These should not be supplemented by additional grounds in domestic legislation.

- 3.2 Public space.** Assemblies are as legitimate uses of public space as commercial activity or the movement of vehicular and pedestrian traffic. This must be acknowledged when considering the necessity of any restrictions.

- 3.3 Content-based restrictions.** Assemblies are held for a common expressive purpose and, thus, aim to convey a message. Restrictions on the visual or audible content of any message should face a high threshold and should only be imposed if there is an imminent threat of violence.

- 3.4 “Time, place and manner” restrictions.** A wide spectrum of possible restrictions that do not interfere with the message communicated is available to the regulatory authority. Reasonable alternatives should be offered if any restrictions are imposed on the time, place or manner of an assembly.

- 3.5 “Sight and sound”.** Public assemblies are held to convey a message to a particular target person, group or organization. Therefore, as a general rule, assemblies should be facilitated within “sight and sound” of their target audience.

4. Procedural Issues

- 4.1 Notification.** It is not necessary under international human rights law for domestic legislation to require advance notification about an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation. Prior notification should, therefore, only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others. Any such legal provision should require the organizer of an assembly to submit a notice of intent rather than a request for permission.

The notification process should not be onerous or bureaucratic. The period of notice should not be unnecessarily lengthy, but should still allow adequate time for the relevant state authorities to make the necessary plans and preparations to satisfy their positive obligations, and for the completion of an expeditious appeal to (and ruling by) a court should any restrictions be challenged.

If the authorities do not promptly present any objections to a notification, the organizers of a public assembly should be able proceed with their activities according to the terms presented in their notification and without restriction.

- 4.2 Spontaneous assemblies.** Where legislation requires advance notification, the law should explicitly provide for an exception from the requirement where giving advance notice is impracticable. Such an exception would only apply in circumstances where the legally established deadline cannot be met. The authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature.
- 4.3 Simultaneous assemblies.** Where notification is provided for two or more unrelated assemblies at the same place and time, each should be facilitated as best as possible. The prohibition of a public assembly solely on the basis that it is due to take place at the same time and location as another public assembly will likely be a disproportionate response where both can be reasonably accommodated. The principle of non-discrimination requires, further, that assemblies in comparable circumstances do not face differential levels of restriction.
- 4.4 Counter-demonstrations.** Counter-demonstrations are a particular form of simultaneous assembly in which the participants wish to express their disagreement with the views expressed at another assembly. The right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate. Indeed, demonstrators should respect the rights of others to demonstrate as well. Emphasis should be placed on the state’s duty to protect and facilitate each event where counter-demonstrations are organized or occur, and the state should make available adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within “sight and sound” of one another.
- 4.5 Decision-making.** The regulatory authorities should ensure that the decision-making process is accessible and clearly explained. The process should enable the fair and objective assessment of all available information. Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizers, with an explanation of the reason for each restriction. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the date for the assembly provided in the notification.

4.6 Review and Appeal. The right to an effective remedy entails the right to appeal the substance of any restrictions or prohibitions on an assembly. An initial option of administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. However, where such a review fails to satisfy the applicant, there should be a mechanism for appeal to an independent court. Appeals should take place in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights. A final ruling, or at least relief through an injunction, should, therefore, be given prior to the date for the assembly provided in the notification.

5. Implementing Freedom of Peaceful Assembly Legislation

5.1 Pre-event planning with law-enforcement officials. Wherever possible, and especially in cases of large assemblies or assemblies related to controversial issues, it is recommended that the organizer discuss with the law-enforcement officials the security and public-safety measures that are to be put in place prior to the event. Such discussions might, for example, cover the deployment of law-enforcement personnel, stewarding arrangements and particular concerns relating to the policing operation.

5.2 Costs. The costs of providing adequate security and safety (including traffic and crowd management) should be fully covered by the public authorities. The state must not levy any additional financial charge for providing adequate policing. Organizers of non-commercial public assemblies should not be required to obtain public-liability insurance for their event.

5.3 A human rights approach to policing assemblies. The policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards. In particular, the state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law-enforcement officials must also protect participants of a peaceful assembly from any person or group (including *agents provocateurs* and counter-demonstrators) that attempts to disrupt or inhibit the assembly in any way.

5.4 The use of negotiation and/or mediation to de-escalate conflict. If a stand-off or other dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution. Such dialogue – although not always successful – can serve as a preventive tool to help avoid the escalation of conflict, the imposition of arbitrary or unnecessary restrictions, or recourse to the use of force.

5.5 The use of force. The use of force must be regulated by domestic law, which should set out the circumstances that justify its use (including the need to provide adequate prior warnings) and the level of force acceptable to deal with various threats. Governments should develop a range of responses that enable a differentiated and proportional use of force. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations where other more peaceful interventions have failed.

5.6 The liability and accountability of law-enforcement personnel. If the force used is not authorized by law, or more force was used than necessary in the circumstances, law-enforcement personnel should face civil and/or criminal liability, as well as disciplinary action. Law-enforcement personnel should also be held liable for failing to intervene where such intervention might have prevented other officers from using excessive force. Where it is alleged that a person is physically injured by law-

enforcement personnel or is deprived of his or her life, an effective, independent and prompt investigation must be conducted.

- 5.7 The liability of organizers.** Organizers of assemblies should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. The organizers should not be liable for the actions of individual participants or for the actions of non-participants or *agents provocateurs*. Instead, there should be individual liability for any individual who personally commits an offence or fails to carry out the lawful directions of law-enforcement officials.
- 5.8 Stewarding assemblies.** It is recommended that the organizers of assemblies be encouraged to deploy clearly identifiable stewards to help facilitate the holding of the event and ensure compliance with any lawfully imposed restrictions. Stewards do not have the powers of law-enforcement officials and should not use force but, instead, should aim to obtain the co-operation of assembly participants by means of persuasion.
- 5.9 Monitors.** The independent monitoring of public assemblies provides a vital source of information on the conduct of assembly participants and law-enforcement officials. This information may be used to inform public debate and, usefully, can also serve as the basis for dialogue among government, local authorities, law-enforcement officials and civil society. NGOs and civil society organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies.
- 5.10 Media access.** The role of the media as a public watchdog is to impart information and ideas on matters of public interest – information that the public also has a right to receive. Media reports can thus provide an otherwise absent element of public accountability for both organizers of assemblies and law-enforcement officials. Media professionals should, therefore, be guaranteed as much access as is possible to an assembly and to any related policing operation.

SECTION B – Explanatory Notes

1. The Importance of Freedom of Assembly

1. Throughout the Guidelines, the term “right to *freedom of peaceful assembly*” is used in preference to that of “the *right to peaceful assembly*”. This emphasizes that any right to assemble is underpinned by a more fundamental freedom, the essence of which is that it should be enjoyed without interference.⁸ Participation in public assemblies should be entirely voluntary and uncoerced.⁹
2. Freedom of peaceful assembly is a fundamental human right that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. It has been recognized as one of the foundations of a functioning democracy. Facilitating participation in peaceful assemblies helps ensure that all people in a society have the opportunity to express opinions they hold in common with others. As such, freedom of peaceful assembly facilitates dialogue within civil society and among civil society, political leaders and government.
3. Freedom of peaceful assembly can serve many purposes, including (but not limited to) the expression of views and the defence of common interests, celebration, commemoration, picketing and protest. The exercise of this freedom can have both symbolic and instrumental significance, and can be an important strand in the maintenance and development of culture and the preservation of minority identities. It is complemented by other rights and freedoms, such as freedom of association,¹⁰ the right to establish and maintain contacts within the territory of a state,¹¹ freedom of movement,¹² the right to cross international borders,¹³ freedom of expression¹⁴ and freedom of thought, conscience and religion.¹⁵ As such, freedom of assembly is of fundamental importance for the personal development, dignity and fulfilment of every individual and for the progress and welfare of society.¹⁶
4. The protection of the right to freedom of assembly also underpins the realization of both social and economic rights (including employment and labour interests) and so-called “third generation” rights (such as the right to a healthy environment). Article 12 of the EU Charter, for example, emphasizes the particular importance of the right to freedom of peaceful assembly and association in relation to political, trade union and civic matters.¹⁷ Furthermore, those who seek to defend and advance socio-economic and developmental interests (properly regarded as indivisible from civil and political rights) can also rely upon the right to organize, as recognized in both Article 5 of the European Social Charter¹⁸ and in the ILO Convention concerning Freedom of Association and Protection of the Right to Organise (C087).¹⁹ The interpretation of national labour laws should be consistent with these standards.
5. With appropriate media coverage, public assemblies communicate with local and national audiences and with the world at large. In countries where the media are limited or restricted, freedom of assembly is vital for those who wish to draw attention to local

issues. This communication potential underlines the importance of freedom of assembly in effecting change.

6. Public assemblies often have increased prominence and significance in the context of elections, when political parties, candidates and other groups and organizations seek to publicize their views and mobilize support (see para. 107).²⁰ Legal measures that are potentially more restrictive than the normal regulatory framework governing freedom of assembly should not be necessary to regulate assemblies during or immediately after an election period, even if there is heightened tension. On the contrary, the general law on assemblies should be sufficient to cover assemblies associated with election campaigns, an integral part of which is the organization of public events.²¹ Open and free political expression is particularly valued in the human rights canon.
7. In addition to serving the interests of democracy, the ability to freely assemble is also crucial to creating a pluralistic and tolerant society in which groups with different and possibly conflicting, backgrounds, beliefs, practices or policies can exist peacefully together. In circumstances where the right to freedom of thought, conscience and religion is also engaged, the role of the authorities “is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other”.²² Furthermore, the European Court of Human Rights has held that in creating a pluralistic, broadminded and tolerant society, “although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: A balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.”²³

2. The Regulation of Freedom of Peaceful Assembly

The legal framework

8. **International and regional standards:** The sources of law identified in this section are among the most important treaties to which ODIHR refers when conducting reviews of legislation. The international and regional standards concerning freedom of assembly derive mainly from two legal instruments: the International Covenant on Civil and Political Rights (ICCPR)²⁴ and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),²⁵ and their optional protocols and protocols, respectively. The American Convention on Human Rights is also of particular relevance to member countries of the Organization of American States.²⁶ Other relevant treaties include the UN Convention on the Rights of the Child, the Charter of Fundamental Rights of the European Union and the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (the CIS Convention).²⁷ The key provisions in relation to the right to freedom of peaceful assembly are reproduced below.

Article 20(1), Universal Declaration of Human Rights

Everyone has the right to freedom of peaceful assembly and association.²⁸

Article 21, International Covenant on Civil and Political Rights

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 15, Convention on the Rights of the Child

- 1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*
- 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

Article 11, European Convention on Human Rights

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

Article 15, American Convention on Human Rights

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.

Article 12, Charter of Fundamental Rights of the European Union

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.*

2. *Political parties at Union level contribute to expressing the political will of the citizens of the Union.*

Article 12, Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (the CIS Convention)

1. *Everyone shall have the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, public health or morals, or for the protection of the rights and freedoms of others. This Article shall not preclude the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or by members of the law enforcement or administrative organs of the State.*

OSCE Copenhagen Document 1990

[The participating States reaffirm that]:

9.2 *[E]veryone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.*

9. The significance of these treaties and documents derives, in part, from the jurisprudence developed by their respective monitoring bodies – the UN Human Rights Committee,²⁹ the European Court of Human Rights and the Inter-American Commission on Human Rights.³⁰ This body of case law is integral to the interpretation of these standards and should be fully understood by those charged with implementing domestic laws on freedom of assembly. It is recommended, therefore, that governments ensure that accurate translations of key cases are made widely available.³¹
10. **Regulating freedom of assembly in domestic law:** Freedom of peaceful assembly should be accorded constitutional protection, which ought, at a minimum, to contain a

positive statement of both the right and the obligation to safeguard it. There should also be a constitutional provision that guarantees fair procedures in the determination of the rights contained therein. Constitutional provisions, however, cannot provide for specific details or procedures. Moreover, where a constitution does not expressly articulate the principles of legality and proportionality, constitutional provisions relating to freedom of assembly that are of a general nature can, without further clarification, afford excessively wide discretion to the authorities and increase the possibility of abuse.

11. While there is no requirement that participating States enact a specific law on freedom of assembly, such legislation can greatly assist in protecting against arbitrary interference with the right to freedom of peaceful assembly.³² Any such domestic legislation should confer broadly framed protection on freedom of assembly, and narrowly define those types of assembly for which some degree of regulation may be justified. It cannot be overemphasized that, in an open society, many types of assembly do not warrant any form of official regulation. The provisions of a specific law can also serve as a guide for sound decision-making by regulatory authorities. Consequently, many states or municipal authorities have enacted specific legislation, in addition to constitutional guarantees, dealing with public assemblies.³³ The purpose of such legislation should never be to inhibit the enjoyment of the constitutional right to freedom of peaceful assembly but, rather, to facilitate and ensure its protection. In this light, it is vital that any specific law should avoid the creation of an excessively regulatory or bureaucratic system. This is a real risk in many countries and has been raised as a particular concern by the Venice Commission.³⁴ Well-drafted legislation, however, can help ensure that freedom of assembly is not over-regulated.
12. Domestic laws regulating freedom of assembly must be consistent with the international instruments ratified by the state in question. Domestic laws should also be drafted, interpreted and implemented in conformity with relevant international and regional jurisprudence and good practice. The enforcement of such laws will depend significantly upon the existence of an impartial and adequately trained police service and an independent judiciary.
13. Furthermore, the rule of law demands legal stability and predictability. Amendments introduced as a response to particular events, for example, often result in partial and piecemeal reforms that are harmful to the protection of rights and to the overall coherence of the legislative framework. Those involved in the drafting of legislation should always consult with those most closely involved in its implementation and with other interested individuals and groups (including local human rights organizations). Such consultation should be considered an integral part of the drafting process. To this end, it may be helpful to place a statutory duty upon the relevant regulatory authority to keep the law under review in light of practice and to make considered recommendations for reform if necessary.

Freedom of peaceful assembly in the context of other rights and freedoms

14. It is also essential that those involved in drafting and implementing laws pertaining to freedom of assembly give due consideration to the interrelation of the rights and freedoms contained in the international and regional standards. The imposition of restrictions on the right to freedom of peaceful assembly also potentially encroaches on the rights to freedom of association, expression and thought, conscience and religion. Where issues under these other rights are also raised, the substantive issues should be examined under the right most relevant to the facts (the *lex specialis*), and the other rights should be viewed as subsidiary (the *lex generalis*).³⁵ Significantly, the European Court of Human Rights has stated that the ECHR is to be read as a whole and that the

application of any individual Article must be in harmony with the overall spirit of the Convention.³⁶

15. The imperative of adopting a holistic approach to freedom of assembly is underscored by the “destruction of rights” provisions contained in Article 30 of the Universal Declaration of Human Rights (UDHR), Article 5 of the ICCPR and Article 17 of the ECHR.³⁷ As detailed further in paragraph 96, for example, participants in public assemblies whose advocacy of national, racial or religious hostility constitutes incitement to discrimination, hatred or violence will forfeit the protection of their expressive rights under the ECHR and ICCPR.

Article 30, Universal Declaration of Human Rights

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Article 5, International Covenant on Civil and Political Rights

(1) Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

Article 17, European Convention on Human Rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Principal definitions and categories of Assembly

For the purposes of the Guidelines, an assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.³⁸

16. An assembly, by definition, requires the presence of at least two persons. Nonetheless, an individual protester exercising his or her right to freedom of expression, where the protester’s physical presence is an integral part of that expression, should also be afforded the same protections as those who gather together as part of an assembly.
17. A range of different activities are protected by the right to freedom of peaceful assembly, including static assemblies (such as public meetings, mass actions, “flash mobs”,³⁹ demonstrations, sit-ins and pickets)⁴⁰ and moving assemblies (such as parades, processions, funerals, pilgrimages and convoys).⁴¹ These examples are not exhaustive, and domestic legislation should frame the types of assembly to be protected as broadly as possible (as demonstrated by the extracts from the laws in Kazakhstan and Finland, below). Recent case law demonstrates the variety of new forms of protest to which the right to freedom of assembly has been held to extend. These include mass processions by cyclists⁴² and drive-slow protests by motorists,⁴³ and the case law confirms that the right to freedom of expression includes the choice of the form in which ideas are conveyed, without unreasonable interference by the authorities – particularly in the case of symbolic protest activities.⁴⁴

18. The question of at which point an assembly can no longer be regarded as a temporary presence (thus exceeding the degree of tolerance presumptively to be afforded by the authorities towards all peaceful assemblies) must be assessed according to the individual circumstances of each case.⁴⁵ Nonetheless, the touchstone established by the European Court of Human Rights is that demonstrators ought to be given sufficient opportunity to manifest their views.⁴⁶ Where an assembly causes little or no inconvenience to others, then the authorities should adopt a commensurately less stringent test of temporariness (see, further, paras. 39-45 in relation to proportionality). The extracts below also serve to highlight that the term “temporary” should not preclude the erection of protest camps or other non-permanent constructions.

Article 1, Decree of the President in force of Law “On the procedure of organization and conduct of peaceful assemblies, mass meetings, processions, pickets and demonstrations in the Republic of Kazakhstan” (1995)

... the forms of expression of public, group and personal interests and protest referred to as assemblies, meetings, processions and demonstrations shall also include hunger strikes in public places and putting up yurts, tents and other constructions, and picketing.

Section 11, Assembly Act, Finland (1999, as amended 2001)

In a public meeting, banners, insignia, loudspeakers and other regular meeting equipment may be used and temporary constructions erected. In this event, the arranger shall see to it that no danger or unreasonable inconvenience or damage is thereby caused to the participants, bystanders or the environment.

19. These Guidelines apply to assemblies held in public places that everyone has an equal right to use (including, but not limited to, public parks, squares, streets, roads, avenues, sidewalks, pavements and footpaths).⁴⁷ In particular, the state should always seek to facilitate public assemblies at the organizers’ preferred location, where this is a public place that is ordinarily accessible to the public (see paras. 39-45, in relation to proportionality).
20. Participants in public assemblies have as much a claim to use such sites for a reasonable period as anyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public space as the more routine purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic).⁴⁸ This principle has been clearly stated by both the European Court of Human Rights and the Inter-American Commission on Human Rights’ Special Rapporteur for Freedom of Expression:

Balcik v. Turkey (2007), paragraph 52, and Ashughyan v. Armenia (2008), paragraph 90:

Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic and, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the ECHR is not to be deprived of all substance.

Inter-American Commission on Human Rights: Report of the Office of the Special Rapporteur for Freedom of Expression (2008), paragraph 70:

Naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression. The Office of the Special Rapporteur is therefore concerned about the existence of criminal provisions that make criminal offenses out of the mere participation in a protest, road blockages (at any time and of any kind) or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected interests such as the life or liberty of individuals.

21. Other facilities ordinarily accessible to the public that are buildings and structures – such as publicly owned auditoriums, stadiums or buildings – should also be regarded as legitimate sites for public assemblies, and will similarly be protected by the rights to freedom of assembly and expression.⁴⁹
22. The right to freedom of peaceful assembly has also been held to cover assemblies on private property.⁵⁰ However, the use of private property for assemblies raises issues that are different from the use of public property. For example, prior notification (other than booking the venue or seeking the permission of the owner of the premises) is not required for meetings on private property.⁵¹
23. In general, property owners may legitimately restrict access to their property to whomsoever they choose.⁵² Nonetheless, there has been a discernable trend towards the privatization of public spaces in a number of jurisdictions, and this has potentially serious implications for assembly, expression and dissent.⁵³ The state may, on occasion, have a positive obligation to ensure access to privately owned places for the purposes of assembly or expression. In the case of *Appleby and Others v. the United Kingdom* (2003), a case concerning freedom of expression in a privately owned shopping centre, the European Court of Human Rights stated that the effective exercise of freedom of expression “may require positive measures of protection, even in the sphere of relations between individuals.”⁵⁴ Freedom of assembly in privately owned spaces may be deserving of protection where the essence of the right has been breached.

Extract from *Appleby and Others v. the United Kingdom* (2003), paragraph 47:

Where ... the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of Convention rights by regulating property rights. The corporate town, where the entire municipality was controlled by a private body, might be an example.

24. Planning regulations and architectural design can also serve to constrict the availability of public places or make them entirely inaccessible for the purposes of freedom of assembly. For example, physical security installations that serve to prevent speakers from coming within close proximity of particular locations (particularly those of symbolic importance) may sometimes constitute an indirect but disproportionate blanket restriction on freedom of assembly, much like direct prohibitions on assemblies at designated locations (see paras. 43, 89 and 102).⁵⁵ Similarly, urban landscaping (including the erection of fences and fountains, the narrowing of sidewalks, streets and roads, or the planting of trees and shrubs) can potentially restrict the use of public space for assemblies. Urban-planning procedures should, therefore, allow for early and widespread consultation. Urban-planning laws might also usefully require that specific consideration be given to the potential impact of new designs on freedom of assembly.

Peaceful and non-peaceful assemblies

25. **Peaceful assemblies:** Only peaceful assembly is protected by the right to freedom of assembly. The European Court of Human Rights has stated that “[i]n practice, the only type of events that did not qualify as ‘peaceful assemblies’ were those in which the organizers and participants *intended* to use violence.”⁵⁶ Participants must also refrain from using violence (though the use of violence by a small number of participants should not automatically lead to the categorization as non-peaceful of an otherwise peaceful assembly – see para. 164). An assembly should, therefore, be deemed peaceful if its organizers have professed peaceful intentions, and this should be presumed unless there is compelling and demonstrable evidence that those organizing or participating in that particular event themselves intend to use, advocate or incite imminent violence.⁵⁷
26. The term “peaceful” should be interpreted to include conduct that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote,⁵⁸ and even include conduct that temporarily hinders, impedes or obstructs the activities of third parties.⁵⁹ Thus, by way of example, assemblies involving purely passive resistance should be characterized as peaceful.⁶⁰ Furthermore, in the course of an assembly, “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 behaviour”.⁶¹
27. The spectrum of conduct that constitutes “violence” should be narrowly construed but may exceptionally extend beyond purely physical violence to include inhuman or degrading treatment⁶² or the intentional intimidation or harassment of a “captive audience”.⁶³ In such instances, the destruction of rights provisions may also be engaged (see para. 15).
28. If this fundamental criterion of peacefulness is met, it triggers the positive obligations entailed by the right to freedom of peaceful assembly on the part of the state authorities (see paras. 31-34, 104 and 144-145). It should be noted that assemblies that survive this initial test (and are thus, *prima facie*, deserving of protection) may still legitimately be restricted on public-order or other legitimate grounds (see chapter 4).

3. Guiding Principles

29. Respect for the general principles discussed below must inform all aspects of the drafting, interpretation and application of legislation relating to freedom of assembly. Those tasked with interpreting and applying the law must have a clear understanding of these principles. To this end, three principles – the presumption in favour of holding assemblies, the state’s duty to protect peaceful assembly, and proportionality – should be clearly articulated in legislation governing freedom of assembly.

The presumption in favour of holding assemblies

30. As a basic and fundamental right, freedom of assembly should be enjoyed without regulation insofar as is possible. Anything not expressly forbidden in law should, therefore, be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of the freedom should be clearly and explicitly established in law. In many jurisdictions this is achieved by way of a constitutional guarantee, but it can also be stated in legislation specifically governing the regulation of assemblies (see the extracts from the Law in Armenia and the Constitution of Romania, below). Such provisions should not be interpreted restrictively by the courts or other authorities.⁶⁴ Furthermore, it is the responsibility of the state to put in place adequate mechanisms and procedures to ensure that the enjoyment of the freedom is practical and not unduly bureaucratic. The relevant authorities should assist individuals and groups who wish to assemble peacefully. In particular, the state should always seek to facilitate and protect public assemblies at the organizer’s preferred location, and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded in any way.

Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, Republic of Armenia (2008)

1. The objective of this law is to create the necessary conditions for citizens of the Republic of Armenia, foreign citizens, stateless persons (hereafter referred to as “citizens”) and legal persons to exercise their right to conduct peaceful and weaponless meetings, assemblies, rallies and demonstrations as set forth in the Constitution and international treaties. The exercise of this right is not subject to any restriction, except in cases prescribed by law and that are necessary in a democratic society in the interests of national security or public security, for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others. This article does not prevent the imposition of lawful restrictions on the exercise of these rights by police and state bodies.

Article 39, Constitution of Romania 1991 (as amended, 2003)

Public meetings, processions, demonstrations or any other assembly shall be free and may be organized and held only peacefully, without arms of any kind whatsoever.

The state’s duty to protect peaceful assembly

31. The state has a positive duty to actively protect peaceful assemblies (see “The liability and accountability of law-enforcement personnel”),⁶⁵ and this should be expressly stated in any relevant domestic legislation pertaining to freedom of assembly and police and military powers. This positive obligation requires the state to protect the participants of a peaceful assembly from any persons or groups (including *agents provocateurs* and counter-demonstrators) that attempt to disrupt or inhibit them in any way.

32. The importance of freedom of assembly for democracy was emphasized in paragraph 2. In this light, the costs of providing adequate security and safety measures (including traffic and crowd management, and first-aid services)⁶⁶ should be fully covered by the public authorities.⁶⁷ The state must not levy any additional financial charge for providing adequate and appropriate policing.⁶⁸ Furthermore, organizers of public assemblies should not be required to obtain public-liability insurance for their events. Similarly, the responsibility to clean up after a public assembly should lie with the municipal authorities.⁶⁹ To require assembly organizers to pay such costs would create a significant deterrent for those wishing to enjoy their right to freedom of assembly and might actually be prohibitive for many organizers. As such, imposing onerous financial requirements on assembly organizers is likely to constitute a disproportionate prior restraint.

Article 10, Law on Public Assemblies, Republic of Moldova (2008)

(4). Public authorities will undertake actions necessary to ensure the provision of the services solicited by the organizers and the services that are normally provided by subordinated bodies and by publicly administered enterprises.

Article 20, Law on Public Assemblies, Republic of Moldova (2008)

(3). Local public authorities cannot charge the organizers for services provided that are services normally provided by subordinated bodies and by publicly administered enterprises.

Article 18, Law of the Russian Federation on Rallies, Meetings, Demonstrations, Marches and Picketing (2004)

[T]he maintenance of public order, regulation of road traffic, sanitary and medical service with the objective of ensuring the holding of the public event shall be carried out on a free basis [by the authorities].

33. The state's duty to protect peaceful assembly is of particular significance where the persons holding or attempting to hold an assembly are espousing a view that is unpopular, as this may increase the likelihood of hostile opposition. However, potential disorder arising from hostility directed against those participating in a peaceful assembly must not be used to justify the imposition of restrictions on peaceful assembly. In addition, the state's positive duty to protect peaceful assemblies also extends to simultaneous opposition assemblies (often known as counter-demonstrations).⁷⁰ The state should, therefore, make available adequate policing resources to facilitate demonstrations and related simultaneous assemblies within "sight and sound" of one another (see paras. 122-124). The principle of non-discrimination requires, further, that assemblies in comparable circumstances do not face differential levels of restriction.
34. The duty to protect peaceful assembly also requires that law-enforcement officials be appropriately trained to deal with public assemblies and that the culture and ethos of the law-enforcement agencies adequately prioritizes the protection of human rights (see paras. 147-148 and 178).⁷¹ This not only means that they should be skilled in techniques of crowd management to minimize the risk of harm to all concerned but, also, that they should be fully aware of and understand their responsibility to facilitate as far as possible the holding of peaceful assemblies.

Legality

35. Any restrictions imposed must have a formal basis in primary law, as must the mandate and powers of the restricting authority.⁷² 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 to foresee the likely consequences of any such breach.⁷³ The incorporation of clear definitions in domestic legislation is vital to ensuring that the law remains easy to understand and apply, and that regulation does not encroach upon activities that ought not to be regulated. Definitions, therefore, should neither be too elaborate nor too broad.
36. While this foreseeability requirement does not mean that a single consolidated law on freedom of assembly need be enacted, it does at least require consistency among the various laws that might be invoked to regulate freedom of assembly. Any law that regulates freedom of peaceful assembly should not duplicate provisions already contained in other legislation, as this would reduce the overall consistency and transparency of the legislative framework.
37. The more specific the legislation, the more precise the language used ought to be. Constitutional provisions, for example, will be less precise than primary legislation because of their general nature.⁷⁴ In contrast, legislative provisions that confer discretionary powers on the regulatory authorities should be narrowly framed and should contain an exhaustive list of the grounds for restricting assemblies (see para. 69). Clear guidelines or criteria should also be established to govern the exercise of such powers and limit the potential for arbitrary interpretation.⁷⁵

38. To aid certainty, any prior restrictions should be formalized in writing and communicated to the organizer of the event within a reasonable time-frame (see, further, para. 135). Furthermore, the relevant authorities must ensure that any restrictions imposed during an event are in full conformity with the law and consistent with established jurisprudence. Finally, the imposition after an assembly of sanctions and penalties that are not prescribed by law is not permitted.

Proportionality

39. Any restrictions imposed on freedom of assembly must pass the proportionality test.⁷⁶ “The principle of proportionality is a vehicle for conducting a balancing exercise. It does not directly balance the right against the reason for interfering with it. Instead, it balances the nature and extent of the interference against the reason for interfering.”⁷⁷ The extent of the interference should cover only the purpose that justifies it.⁷⁸ Moreover, given that a wide range of interventions might be suitable, the least intrusive means of achieving the legitimate purpose should always be given preference.⁷⁹
40. The regulatory authority must recognize that it has authority to impose a range of restrictions, rather than viewing the choice as simply between non-intervention or prohibition (see, further, Time, Place and Manner Restrictions, in paras. 99-100). Any restrictions should closely relate to the particular concerns raised and should be narrowly tailored to meet the specific aim(s) pursued by the authorities. The state must show that any restrictions promote a substantial interest that would not be achieved absent the restriction. The principle of proportionality thus requires that authorities do not routinely impose restrictions that would fundamentally alter the character of an event (such as relocating assemblies to less central areas of a city).⁸⁰

Extract from Article 7(I)-(II), Law of the Republic of Azerbaijan on Freedom of Assembly (1998)

I. No restrictions shall be placed on the exercise of the right to freedom of assembly other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

II. Restriction of the freedom of assembly provided for in part I of the present Article must be proportionate to pursued goals. To reach the goal such a restriction must not exceed necessary and sufficient limits.

41. The principle of proportionality requires that there be an objective and detailed evaluation of the circumstances affecting the holding of an assembly. Furthermore, where other rights potentially conflict with the right to freedom of peaceful assembly, decisions by the regulatory authorities should be informed by a parallel analysis of the respective rights at stake (bearing in mind that the limitations or qualifications permitted may not be identical for these other rights). In other words, there should be a full assessment of each of the rights engaged, examining the proportionality of any interference potentially caused by the full protection of the right to freedom of peaceful assembly.⁸¹
42. The European Court of Human Rights has further held that the reasons adduced by national authorities to support any claim of proportionality must be “relevant and sufficient”,⁸² “convincing and compelling”⁸³ and based on “an acceptable assessment of the relevant facts”.⁸⁴ Mere suspicion or presumptions cannot suffice.⁸⁵ This is particularly

the case where the assembly concerns a matter of public interest or where political speech is involved.⁸⁶

43. Consequently, the blanket application of legal restrictions – for example, banning all demonstrations during certain times, or in particular locations or public places that are suitable for holding assemblies – tends to be over-inclusive. Thus, they will fail the proportionality test, because no consideration has been given to the specific circumstances in each case.⁸⁷ Legislative provisions that limit the holding of assemblies to only certain specified sites or routes (whether in central or remote locations) seriously undermine the communicative purpose of freedom of assembly, and should be regarded as a prima facie violations of the right. Similarly, the regulation of assemblies in residential areas or of assemblies at night time should be handled on a case-by-case basis rather than being specified as prohibited categories of assemblies.
44. The time, place and manner of individual public assemblies can, however, be regulated to prevent them from unreasonably interfering with the rights and freedoms of other people (see chapter 4). This reflects the need for a proper balance to be struck between the rights of persons to express their views by means of assembly and the interest of not imposing unnecessary burdens on the rights of non-participants.
45. If, having regard for the relevant factors, the authorities have a proper basis for concluding that restrictions should be imposed on the time or place of an assembly (rather than merely the manner in which the event is conducted), a suitable alternative time or place should be made available.⁸⁸ Any alternative must be such that the message that the protest seeks to convey is still capable of being effectively communicated to those to whom it is directed – in other words, within “sight and sound” of the target audience (see para. 33 and Simultaneous Assemblies in paras. 122-124).⁸⁹

Article 13(4)-13(5), Law of the Republic of Armenia on Conducting Meetings, Assemblies, Rallies and Demonstrations (2008)

4. Should the authorized body find during the consideration of notification that there are grounds to prohibit the conduct of a mass public event pursuant to paragraph 2 or the last paragraph of part 1 of this Article, the authorized body shall offer the organizer other dates (in the place and at the time specified in the notification) or other hours (in the place and on the date specified in the notification) for conducting a mass public event or other conditions concerning the form of the event.

Any date proposed by the authorized body shall be no more than two days after the date proposed by the organizer.

Any time proposed by the authorized body shall be the same as proposed by the organizer, or within three hours' difference.

5. Should the authorized body find, during consideration of the notification, that there are sufficient grounds to prohibit the conducting of a mass public event ... the authorized body shall offer the organizer another place for conducting the mass public event (on the date and time specified in the notification).

Any place proposed by the authorized body shall meet the reasonable requirements of the organizer, specifically with regard to the possibility of participation of the estimated number of participants (provided the notification contains such information). Proposed places should not include areas outside the selected community and, in the case of Yerevan, areas outside selected districts. The proposed place shall be as close as possible to the place specified in the notification.

Non-discrimination

46. Freedom of peaceful assembly is to be enjoyed equally by all persons. The principle that human rights shall be applied without discrimination lies at the core of the interpretation of human rights standards. Article 26 of the ICCPR and Article 14 of the ECHR require that each state secure the enjoyment of the human rights recognized in these treaties for all individuals within its jurisdiction without discrimination.⁹⁰
47. Article 14 of the ECHR does not provide a freestanding right to non-discrimination but complements the other substantive provisions of the Convention and its Protocols. Thus, Article 14 is applicable only where the facts at issue (or arguably, the grounds of restriction) fall within the ambit of one or more of the other Convention rights.⁹¹ OSCE participating States and parties to the ECHR are encouraged to ratify Protocol 12 (see below), which contains a general prohibition of discrimination.⁹² Additionally, Article 5 of the Convention on the Elimination of all forms of Racial Discrimination requires States Parties to prohibit and eliminate racial discrimination.

Article 26 ICCPR

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 5, Convention on the Elimination of all forms of Racial Discrimination

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

... (d) Other civil rights, in particular;

... (ix) The right to freedom of peaceful assembly and association;

Article 14 ECHR

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol 12 ECHR, Article 1 – General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article 21, Charter of Fundamental Rights of the European Union:

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

48. Any discrimination based on grounds such as sex, “race”, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. Moreover, the failure of the state to prevent or take steps in response to acts of discrimination committed by private individuals may also constitute a breach of the right to freedom from discrimination.⁹³
49. Importantly, Article 26 of the ICCPR has been interpreted to include sexual orientation in the reference to non-discrimination on grounds of “sex”.⁹⁴ Article 13 of the Amsterdam Treaty also provides for the European Union to “undertake necessary actions to fight discrimination based on ... sexual orientation”, and Article 21(2) of the EU Charter of Fundamental Rights prohibits “any discrimination on any ground”, including on the basis of sexual orientation.⁹⁵ Both Principle 20 of the *Yogyakarta Principles*⁹⁶ and the *Committee of Ministers Recommendation on measures to combat discrimination on grounds of sexual orientation*⁹⁷ are also directly relevant in this regard.
50. The regulatory authority must not impose more onerous preconditions on some persons wishing to assemble than on others whose cases are similar.⁹⁸ The regulatory authority may, however, treat differently persons whose situations are significantly different.⁹⁹ Article 26 of the ICCPR guarantees all persons equality before the law and equal protection of the law. This implies that decisions by the authorities concerning freedom of assembly must not have a discriminatory impact, and so both direct and indirect discrimination are prohibited.¹⁰⁰ Furthermore, the law-enforcement authorities have an obligation to investigate whether discrimination is a contributory factor to any criminal conduct that occurs during an assembly (such as participants being physically attacked).¹⁰¹
51. Attempts to prohibit and permanently exclude assemblies organized by members of one ethnic, national or religious group from areas predominantly occupied by members of another group may be deemed to promote segregation, and would be contrary to the *UN Convention on the Elimination of All Forms of Racial Discrimination*, Article 3 of which affirms that “[p]arties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”
52. This following section highlights some of the key human rights provisions that protect the freedom of peaceful assembly by particular sections of society whose freedoms are sometimes not adequately protected.
53. **Groups, unregistered associations and legal entities:** Freedom of peaceful assembly can be exercised by both individuals and corporate bodies (as, for example, provided in the extract from the Bulgarian Law on Gatherings, Meetings and Manifestations, below).¹⁰² In order to ensure that freedom of peaceful assembly is protected in practice, states should remove the requirement of mandatory registration of any public organization and guarantee the right of citizens to set up formal and informal associations. (See Freedom of Association and Freedom of Assembly, in paras. 105-106).

Article 2, Bulgarian Law on Gatherings, Meetings and Manifestations (1990)

Gatherings, meetings and manifestations can be organized and held by [individuals], associations, political and other social organizations.

54. **Minorities:** The freedom to organize and participate in public assemblies should be guaranteed to members of minority and indigenous groups. Article 7 of the Council of Europe Framework Convention on National Minorities (1995) provides that “[t]he Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.”¹⁰³ Article 3(1), UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) also states that “[p]ersons belonging to minorities may exercise their rights ... individually as well as in community with other members of their group, without any discrimination.”¹⁰⁴ As noted in paragraph 7, “democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position”.¹⁰⁵
55. **Non-nationals (stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists):** International human rights law requires that non-nationals “receive the benefit of the right of peaceful assembly”.¹⁰⁶ It is important, therefore, that the law extends freedom of peaceful assembly not only to citizens, but that it also includes stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists. Note, however, that Article 16 of the ECHR provides that “[n]othing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.” The application of Article 16 should be confined to speech activities by non-nationals that directly burden national security. There is no reason to stop non-nationals from participating in an assembly that, for example, challenges domestic immigration laws or policies. The increase in transnational protest movements also underscores the importance of facilitating freedom of assembly for non-nationals.¹⁰⁷
56. **Women:** Under Article 3 of the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), States Parties are obliged to take all appropriate measures to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.¹⁰⁸
57. **Children:** Like adults, children have legitimate claims and interests. Freedom of peaceful assembly provides them with a means of expressing their views and contributing to society. Article 15 of the UN Convention on the Rights of the Child requires States Parties to recognize the right of children to organize and participate in peaceful assemblies.¹⁰⁹

Article 15, UN Convention on the Rights of the Child

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

58. In light of the important responsibilities of the organizers of public assemblies (see paras. 185-198), the law may set a certain minimum age for organizers, having due regard to the evolving capacity of the child (see the examples from the Finland

Assembly Act and the Law on Public Assemblies of the Republic of Moldova, below). The law may also provide that minors may organize a public event only if their parents or legal guardians consent to their doing so.

Section 5, Finland's Assembly Act (1999): Right to arrange public meetings

...A person who is without full legal capacity but who has attained 15 years of age may arrange a public meeting, unless it is evident that he/she will not be capable of fulfilling the requirements that the law imposes on the arranger of a meeting. Other persons without full legal capacity may arrange public meetings together with persons with full legal capacity.

Law on Public Assemblies of the Republic of Moldova (2008)

Article 6, Organizers of assemblies ...

(2) Minors of age 14 and persons declared to have limited legal capacity can organize public assemblies together with persons with full legal capacity.

Article 7, Participants in assemblies

(1) Everyone is free to actively participate and assist at the assembly.

(2) Nobody can be obliged to participate or assist at an assembly against his/her will.

59. **Persons with disabilities:** The UN Convention on the Rights of Persons with Disabilities similarly emphasizes the need to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities...”¹¹⁰ The international standards provide that “[e]very person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in ... the International Covenant on Civil and Political Rights, and in other relevant instruments.”¹¹¹ All individuals should thus be facilitated in the enjoyment of their freedom to peacefully assemble, irrespective of their legal capacity.
60. **Law-enforcement personnel and state officials:** The ECHR permits “lawful restrictions on the exercise of these rights by members of the armed forces, of the police, or of the administration of the State”.¹¹² Any such restrictions must be designed to ensure that the responsibilities of those in the services concerned are properly discharged and that any need for the public to have confidence in their neutrality is maintained.¹¹³ The definition of neutrality is central. Neutrality should not be interpreted so as to unnecessarily restrict the freedom to hold and express an opinion. Legislation should not, therefore, restrict the freedom of assembly of law-enforcement personnel (including the police and the military) or state officials unless the reasons for restriction are directly connected with their service duties, and then only to the extent absolutely necessary in light of considerations of professional duty.

Good administration and transparent decision-making

61. The public should be informed which body is responsible for taking decisions about the regulation of freedom of assembly, and this should be clearly stated in law.¹¹⁴ It is important to have a properly mandated decision-making authority, as those officials who have to bear the risk of taking controversial decisions about assemblies often come under intense public pressure (potentially leading to decisions that do not adhere to or reflect the human rights principles set out in these Guidelines). In some jurisdictions, it may be appropriate for decisions about regulating assemblies to be taken by a different body from the authority tasked with enforcing the law. This separation of powers can assist those enforcing the law, by rendering them less amenable to pressure to change an unfavourable decision. In jurisdictions where there are diverse ethnic and cultural populations and traditions, it might be helpful if the regulatory authority is broadly representative of those different backgrounds.¹¹⁵
62. The officials responsible for making decisions concerning the regulation of the right to freedom of assembly should be fully aware of and understand their responsibilities in relation to the human rights issues bearing upon their decisions. To this end, such officials should receive periodic training in relation to the implications of existing and emerging human rights case law. The regulatory authority must also be adequately staffed and resourced, so as to enable it to effectively fulfil its obligations in a way that enhances co-operation between the organizer and authorities.
63. The regulatory authority should ensure that the general public has adequate access to reliable information relating to public assemblies,¹¹⁶ as well as about its procedures and operation. Many countries already have legislation specifically relating to access to information, open decision-making and good administration, and these laws should be applicable to the regulation of freedom of assembly.
64. Procedural transparency should ensure that freedom of peaceful assembly is not restricted on the basis of imagined risks or even real risks which, if opportunities were given, could be adequately addressed prior to the assembly. In this regard, the authorities should ensure that its decisions are as well-informed as possible. Domestic legislation could, for example, require that a representative of the decision-making authority attend any public assembly in relation to which substantive human rights concerns have been raised (irrespective of whether or not any restrictions were actually imposed). Organizers of public assemblies and those whose rights and freedoms will be directly affected by an assembly should also have an opportunity to make oral and written representations directly to the regulatory authority (see Decision-making and review processes in paras. 132-140). It is of note that Article 41 of the Charter of Fundamental Rights of the European Union provides that everyone has the right to good administration.

Article 41, Charter of Fundamental Rights of the European Union (1) *Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.*

(2) *This right includes:*

- *the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*
- *the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*
- *the obligation of the administration to give reasons for its decisions.*

65. Laws relating to freedom of assembly should outline a clear procedure for interaction between event organizers and the regulatory authorities. This should set out appropriate time limits, working backwards from the date of the proposed event, and should allow adequate time for each stage in the regulatory process
66. **Review and appeal:** An initial option of administrative review (see para. 137) can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. However, where such a review fails to satisfy the applicant, there should be an opportunity to appeal the decision of the regulatory authority to an independent court. Appeals should take place in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights. A final ruling should, therefore, be given prior to the date of the assembly in the notification. In the absence of the possibility of a final ruling, the law should provide for the possibility of interim relief by injunction. This requirement is examined further in Chapter 5 "Procedural Issues" (Decision-making and review processes, paras. 132-140) and in Annex A, "Enforcement of international human rights standards".
67. **The liability of the regulatory authority:** The regulatory authorities must comply with their legal obligations and should be accountable for any failure – procedural or substantive – to do so whether before, during or after an assembly. Liability should be gauged according to the relevant principles of administrative or criminal law or judicial review concerning the misuse of public power.

Article 183, Moldova's Penal Code (2002)

Violation of the right to freedom of assembly

Violation of the right to public assembly by illegal actions to impede an assembly or by constraining participation is liable to a fine or imprisonment for up to 2 years.

Article 67, Moldova's Contraventions Code (2008)

Violation of the right to freedom of assembly

Impeding the organization and carrying out of assemblies, as well as putting obstacles in the way of or constraining participation in the assembly, will be sanctioned by a fine.

4. Restrictions on Freedom of Assembly

68. While international and regional human rights instruments affirm and protect the right to freedom of peaceful assembly, they also allow states to impose certain limitations on that freedom. This chapter examines the legitimate grounds for the imposition of restrictions on public assemblies and the types of limitation which can be imposed.

Legitimate grounds for restriction

69. The legitimate grounds for such restrictions are prescribed by the relevant international and regional human rights instruments, and these should neither be supplemented by additional grounds in domestic legislation¹¹⁷ nor loosely interpreted by the authorities.¹¹⁸
70. The regulatory authorities must not raise obstacles to freedom of assembly unless there are compelling arguments to do so. Applying the guidance below should help the regulatory authorities test the validity of such arguments. The legitimate aims discussed in this section (as provided in the limiting clauses in Article 21 of the ICCPR and Article 11 of the ECHR) are not a licence to impose restrictions, and the onus rests squarely on the authorities to substantiate any justifications for the imposition of restrictions.
71. **Public order:** The inherent imprecision of this term¹¹⁹ must not be exploited to justify the prohibition or dispersal of peaceful assemblies. Neither a hypothetical risk of public disorder nor the presence of a hostile audience are legitimate grounds for prohibiting a peaceful assembly.¹²⁰ Prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate, and any isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution rather than prior restraint.¹²¹ The European Court of Human Rights has noted that “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 behaviour”.¹²²
72. An assembly that the organizers intend to be peaceful may still legitimately be restricted on public-order grounds in certain circumstances. Such restrictions should only be imposed when there is evidence that participants will themselves use or incite imminent, lawless and disorderly action and that such action is likely to occur. This approach is designed to extend protection to controversial speech and political criticism, even where this might engender a hostile reaction from others (see, further, content-based restrictions in paras. 94-98).¹²³
73. Compelling and demonstrable evidence is required demonstrating that those organizing or participating in the particular event will themselves use violence. In the event that there is evidence of potential violence, the organizer must be given a full and fair opportunity for rebuttal by submitting evidence that the assembly will be peaceful.
74. **Public safety:** There is a significant overlap between public-safety considerations and those concerning the maintenance of public order. Particular public-safety concerns might arise, for example, when assemblies are held outside daylight hours, or when moving vehicular floats form part of an assembly. In such instances, extra precautionary measures should generally be preferred to restriction.
75. The state has a duty to protect public safety, and under no circumstances should this duty be assigned or delegated to the organizer of an assembly. However, the organizer and stewards may assist in ensuring the safety of members of the public. An assembly

organizer could counter any claims that public safety might be compromised by his or her event by, for example, ensuring adequate stewarding (see paras. 191-196).

76. **The protection of health:** In the rare instances in which a threat to persons' health might be an appropriate basis for restricting of one or more public assemblies, those restrictions should not be imposed unless other similar concentrations of individuals are also restricted. Thus, before a restriction may be justified based on the need to protect public health, similar restrictions should also have been applied to attendance at school, concerts, sports events and other such activities at which people ordinarily gather.
77. Restrictions might also be justified on occasions where the health of participants in an assembly becomes seriously compromised. In the case of *Cisse v. France* (2002), for example, the intervention of the authorities was justified on health grounds, given that the protesters had reached a critical stage during a hunger strike, and were confined in unsanitary conditions. Again, however, such reasoning should not be relied upon by the authorities to pre-emptively break up peaceful assemblies, even where a hunger strike forms part of the protest strategy.
78. **The protection of morals:** The main human rights treaties that protect freedom of assembly (the ICCPR and ECHR) are "living instruments" and are thus attuned to diverse and changing moral values. Measures purporting to safeguard public morals must, therefore, be tested against an objective standard of whether they meet a pressing social need and comply with the principle of proportionality.¹²⁴ Indeed, it is not sufficient for the behaviour in question merely to offend morality – it must be behaviour that is deemed criminal and has been defined in law as such (see para. 35).¹²⁵
79. Moreover, the protection of morals should not ordinarily be regarded as an appropriate basis for imposing restrictions on freedom of assembly.¹²⁶ Reliance on such a category can too easily lead to the regulation of content and discriminatory treatment. Restrictions will violate the right to freedom of peaceful assembly unless they are permissible under the standards governing the regulation of content (see paras. 94-98) and non-discrimination (paras. 46-60).¹²⁷
80. **The protection of the rights and freedoms of others:** The regulatory authority has a duty to strike a proper balance between the important freedom to peacefully assemble and the competing rights of those who live, work, shop, trade and carry on business in the locality affected by an assembly. That balance should ensure that other activities taking place in the same space may also proceed if they themselves do not impose unreasonable burdens.¹²⁸ Temporary disruption of vehicular or pedestrian traffic is not, of itself, a reason to impose restrictions on an assembly.¹²⁹ Nor is opposition to an assembly sufficient, of itself, to justify prior limitations. Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe upon the rights and freedoms of others.¹³⁰ This is particularly so given that freedom of assembly, by definition, constitutes only a temporary interference with these other rights.
81. While business owners and local residents do not normally have a right to be consulted in relation to the exercise of fundamental rights¹³¹ where their rights are engaged, it is good practice for organizers and law-enforcement agencies to discuss with the affected parties how the various competing rights claims might best be protected to the mutual satisfaction of all concerned (see para. 134, in relation to negotiation and mediated dialogue).

82. Where the regulatory authority restricts an assembly for the purpose of protecting the competing rights and freedoms of others, the body should state:
- The nature of any valid rights claims made;
 - How, in the particular context, these rights might be infringed (outlining the specific factors considered);
 - How, precisely, the authority's decision mitigates against any such infringement (the necessity of the restrictions); and
 - Why less intrusive measures could not be used.
83. Rights that might be claimed by non-participants affected by an assembly (although these need not be rights enumerated in the ICCPR or ECHR)¹³² potentially include: the right to privacy (protected by Article 17 of the ICCPR and Article 8 of the ECHR)¹³³ the right to peaceful enjoyment of one's possessions (protected by Article 1 of Protocol 1 of the ECHR),¹³⁴ the right to liberty and security of person (Article 9 of the ICCPR and Article 5 of the ECHR),¹³⁵ and the right to freedom of movement (Article 12 of the ICCPR and Article 2 of Protocol 4 of the ECHR).¹³⁶ It may also be that restrictions on freedom of assembly could be justified to protect the right of others to freedom of expression and to receive information (Article 19 of the ICCPR and Article 10 of the ECHR),¹³⁷ or to manifest their religion or belief (Article 18 of the ICCPR and Article 9 of the ECHR).¹³⁸ Nonetheless, no restrictions should be imposed on freedom of assembly on the grounds of protecting the rights of others unless the requisite threshold has been satisfied in relation to these other rights. Indeed, anyone seeking to exercise the right to freedom of assembly in a way that would destroy the rights of others already forfeits his or her right to assemble by virtue of the destruction of rights clause in Article 5 of the ICCPR and Article 17 of the ECHR (see para. 15).
84. Assessing the impact of public events on the rights of others must take due consideration of the frequency of similar assemblies before the same audience. While a high threshold must again be met, the cumulative impact on a "captive audience" of numerous assemblies (for example, in a purely residential location) might constitute a form of harassment that could legitimately be restricted to protect the rights of others. Repeated, albeit peaceful, demonstrations by particular groups might also in certain circumstances be viewed as an abuse of a dominant position (see paras. 7 and 54), legitimately restricted to protect the rights and freedoms of others.¹³⁹ The principle of proportionality requires that, in achieving this aim, the least onerous restrictions possible should be used (see paras. 39-45).¹⁴⁰
85. **National security:** The issue of national security is often given too wide an interpretation in relation to freedom of assembly. The Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights limit reliance on national-security grounds to justify restrictions of freedom of expression and assembly.

"National Security", Part VI, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights

29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A State responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

86. Similarly, Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information establishes clear parameters for the imposition of restrictions on freedom of expression in the interests of national security.¹⁴¹

Principle 6, Johannesburg Principles on National Security, Freedom of Expression and Access to Information

Expression That May Threaten National Security

Subject to Principles 15 and 16, expression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;*
- (b) it is likely to incite such violence; and*
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.*

Legislation intended to counter terrorism and extremism

87. Efforts to tackle terrorism or extremism and to enhance security must never be invoked to justify arbitrary action that curtails the enjoyment of fundamental human rights and freedoms. The International Commission of Jurists 2004 Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism (the Berlin Declaration)¹⁴² emphasized that “the odious nature of terrorist acts cannot serve as a basis or pretext for states to disregard their international obligations, in particular in the protection of fundamental human rights”. Similarly, both the Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis (2007)¹⁴³ and the OSCE manual *Countering Terrorism, Protecting Human Rights* (2007)¹⁴⁴ caution against the imposition of undue restrictions on the exercise of freedom of expression and assembly during crisis situations.

88. Principle 8 of the Berlin Declaration is of particular relevance:

Principle 8, Berlin Declaration of the International Commission of Jurists on Upholding Human Rights and the Rule of Law in Combating Terrorism

In the implementation of counter-terrorism measures, States must respect and safeguard fundamental rights and freedoms, including freedom of expression, religion, conscience or belief, association, and assembly, and the peaceful pursuit of the right to self-determination, as well as the right to privacy, which is of particular concern in the sphere of intelligence gathering and dissemination. All restrictions on fundamental rights must be necessary and proportionate.

89. Counter-terrorism measures pose a number of particular challenges to the right to freedom of peaceful assembly. Commonly, emergency legislation is introduced to

increase police stop-and-search powers, and it may also extend the time period allowed for administrative detention without charge. Other examples of exceptional measures include the proscription of particular organizations and the criminalization of expression of support for them, the creation of offences concerning provocation to or advocacy of extremism and/or terrorism,¹⁴⁵ the designation of specific sites or locations as prohibited areas (see paras. 24 and 43), increased penalties for participation in unlawful assemblies, and the imposition of border controls to prevent entry to individuals deemed likely to demonstrate and cause disturbances to public order. All of these have a detrimental impact on the right to freedom of peaceful assembly, and all must be shown to be necessary and strictly proportionate (see General Principles in chapter 2).¹⁴⁶

90. Any such extraordinary pre-emptive measures should be transparent and based on corroborated evidence,¹⁴⁷ have time limits and be subject to independent or judicial review. Specifically, the unilateral suspension of the Schengen Agreement to enable the re-imposition of border controls in anticipation of large-scale assemblies should not permit disproportionate or blanket restrictions on the freedom of movement of those travelling to participate in or observe an assembly.¹⁴⁸
91. Domestic legislation designed to counter terrorism or extremism should narrowly define the terms “terrorism” and “extremism” so as not to include forms of civil disobedience and protest, the pursuit of certain political, religious or ideological ends, or attempts to exert influence on other sections of society, the government or international opinion. Furthermore, any discretionary powers afforded to law-enforcement officials should be narrowly framed and include adequate safeguards to reduce the potential for arbitrariness.¹⁴⁹

Derogations in times of war or other public emergency

92. Under Article 4 of the ICCPR and Article 15 of the ECHR, in times of war or public emergency threatening the life of the nation, states may take measures derogating from their obligation to guarantee freedom of assembly. They may do so only to the extent strictly required by the exigencies of the situation and provided that such measures are not inconsistent with their other obligations under international law.¹⁵⁰ The crisis or emergency must be one that “affects the whole population and constitutes a threat to the organized life of the community of which the State is composed”.¹⁵¹ The Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights state, further, that neither “[i]nternal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation” nor “[e]conomic difficulties” can justify derogations under Article 4.¹⁵²
93. A public emergency must be both proclaimed to the citizens in the state concerned¹⁵³ and notification provided to other States Parties to the ICCPR through the intermediary of the UN Secretary-General (Article 4(3) of the ICCPR), the Secretary General of the Council of Europe (Article 15(3) of the ECHR) and the Secretary General of the OSCE (Paragraph 28.10 of the Moscow Meeting of the Conference on the Human Dimension, 1991). Derogations should also have time limits.

Types of restriction

94. **Content-based restrictions:** Speech and other forms of expression will normally enjoy protection under Article 19 of the ICCPR and Article 10 of the ECHR. In general, therefore, the regulation of public assemblies should not be based upon the content of the message they seek to communicate. As the European Court of Human Rights has

recently stated, it is “unacceptable from the standpoint of Article 11 of the Convention that an interference with the right to freedom of assembly could be justified simply on the basis of the authorities’ own view of the merits of a particular protest”.¹⁵⁴ This principle is explicitly reflected in the extract from the Netherlands’ Public Assemblies Act, cited below. Any restrictions on the visual or audible content of any message displayed or voiced should therefore face heightened (sometimes referred to as “strict” or “anxious”) scrutiny, and only be imposed if there is an imminent threat of violence. Moreover, criticism of government or state officials should never, of itself, constitute a sufficient ground for imposing restrictions on freedom of assembly; the European Court of Human Rights has often emphasized that the “limits of permissible criticism are wider with regard to the government than in relation to a private citizen”.¹⁵⁵

Section 5, the Netherlands' Public Assemblies Act, (1988)

3. A condition, restriction or prohibition may not relate to the religion or belief to be professed, or the thoughts or feelings to be expressed.

95. Whether behaviour constitutes the intentional incitement of violence is a question that must inevitably be assessed based on the particular circumstances.¹⁵⁶ Some difficulty arises where the message concerns unlawful activity, or where it could be construed as inciting others to commit non-violent but unlawful acts. Expressing support for unlawful activity can, in many cases, be distinguished from disorderly conduct and, therefore, should not face restriction on public-order grounds. The touchstone must be, again, the existence of an imminent threat of violence.¹⁵⁷
96. While expression should normally still be protected, even if it is hostile or insulting to other individuals, groups or particular sections of society, the law should still prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.¹⁵⁸ Specific instances of hate speech “may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.”¹⁵⁹ Even then, resort to such speech by participants in an assembly does not, of itself, necessarily justify the dispersal of all persons participating in the event, and law-enforcement officials should take measures (such as arrest) only against the particular individuals involved (either during or after the event).
97. Where the insignia, uniforms, emblems, music, flags, signs or banners to be displayed or played during an assembly conjure memories of a painful historical past, this should not, of itself, be reason to interfere with the right to freedom of peaceful assembly to protect the rights of others.¹⁶⁰ On the other hand, where such symbols are intrinsically and exclusively associated with acts of physical violence, the assembly might legitimately be restricted to prevent the reoccurrence of such violence or to protect the rights of others.
98. The wearing of a mask for expressive purposes at a peaceful assembly should not be prohibited, so long as the mask or costume is not worn for the purpose of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct.¹⁶¹
99. **“Time, place and manner” restrictions:** The types of restriction that might be imposed on an assembly relate to its “time, place, and manner”. This phrase originates from jurisprudence in the United States, and captures the sense that a wide spectrum of possible restrictions that do not interfere with the message communicated is available to the regulatory authority (see “Proportionality” in paras. 39-45). In other words, rather than the choice between non-intervention and prohibition, the authorities have recourse to many “mid-range” limitations that might adequately serve the purpose(s) they seek to achieve (including the prevention of activity that causes damage to property or harm to persons). These limitations can relate to changes to the time or place of an event, or the manner in which the event is conducted. An example of “manner” restrictions might relate to the use of sound-amplification equipment or lighting and visual effects. In this case, regulation may be appropriate because of the location or time of day for which the assembly is proposed.

100. The regulatory authority must not impose restrictions simply to pre-empt possible disorder or interference with the rights of others. The fact that restrictions can be imposed during an event (and not only before it takes place) enables the authorities to avoid imposing onerous prior restrictions and to ensure that restrictions correspond with and reflect the situation as it develops. This, however, in no way implies that the authorities can evade their obligations in relation to good administration (see paras. 61-67) by simply regulating freedom of assembly by administrative fiat. Furthermore, (as discussed in paras. 134 and 157) the use of negotiation and/or mediation can help resolve disputes around assemblies by enabling law-enforcement authorities and the event organizer to reach agreement on any necessary limitations.
101. **“Sight and sound”**: Given that there are often a limited number of ways to effectively communicate a particular message, the scope of any restrictions must be precisely defined. In situations where restrictions are imposed, these should strictly adhere to the principle of proportionality and should always aim to facilitate the assembly within “sight and sound” of its object or target audience (see paras. 33, 45 and 123).
102. **Restrictions imposed prior to an assembly (“prior restraints”)**: These are restrictions on freedom of assembly either enshrined in legislation or imposed by the regulatory authority prior to the date of the event provided in the notification. Such restrictions should be concisely drafted so as to provide clarity for both those who have to follow them (assembly organizers and participants) and those tasked with enforcing them (the police or other law-enforcement personnel). They can take the form of time, place and manner restrictions or outright prohibitions. However, blanket legislative provisions, which ban assemblies at specific times or in particular locations, require much greater justification than restrictions on individual assemblies.¹⁶² Given the impossibility of taking account of the specific circumstances of each particular case, the incorporation of such blanket provisions in legislation, as well as their application, may be disproportionate unless a pressing social need can be demonstrated. As the European Court of Human Rights has stated, “[s]weeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.”¹⁶³
103. The organizer of an assembly should not be compelled or coerced either to accept whatever alternative(s) the authorities propose or to negotiate with the authorities about key aspects, particularly the time or place, of a planned assembly. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.
104. Prohibition of an assembly is a measure of last resort, only to be considered when a less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant interests. Given the state’s positive duty to provide adequate resources to protect peaceful assembly, prohibition may actually represent a failure of the state to meet its positive obligations. Where a state body has unlawfully prohibited an action, the state bears legal responsibility.
105. **Freedom of association and freedom of assembly**: Since the right to assemble presumes the active presence of others for its realization, restrictions of freedom of association (Article 22 of the ICCPR and Article 11 of the ECHR) will often undermine the right to assemble. Freedom of association encompasses the ability of groups of individuals to organize collectively and to mobilize in protest against the state and/or other interests. Restrictions on the right to freedom of association that might undermine

freedom of assembly include requiring formal registration before an association can lawfully assemble, prohibiting the activities of unregistered groups, prescribing the scope of an association's mandate,¹⁶⁴ rejecting registration applications, disbanding or prohibiting an association, or imposing onerous financial preconditions.

106. Like freedom of peaceful assembly, the right to associate is essential to the effective functioning of democracy and civil society, and such restrictions to the freedom of peaceful association can, therefore, rarely be justified. Furthermore, while the right to associate – within a political party, a trade union or other civic body – may logically precede the organization of public assemblies (see para. 53), the right to freedom of peaceful assembly should never be made contingent upon registration as an association.¹⁶⁵ As the European Court of Human Rights stated in *Stankov and the United Macedonian Organisation ILINDEN v. Bulgaria* (2001) that “while past findings of national courts which have screened an association are undoubtedly relevant in the consideration of the dangers that its gatherings may pose, an automatic reliance on the very fact that an organization has been considered anti-constitutional – and refused registration – cannot suffice to justify under Article 11(2) of the Convention a practice of systematic bans on the holding of peaceful assemblies”.¹⁶⁶
107. **Indirect restrictions on freedom of assembly:** Restrictions that have the effect of burdening freedom of assembly should not be imposed on other rights unless there is a compelling justification for doing so. It is noteworthy that restrictions imposed on other rights often indirectly impact upon the enjoyment of the right to freedom of peaceful assembly, and should, therefore, be taken into consideration when assessing the extent to which a state has met its positive obligations to protect freedom of assembly.¹⁶⁷ For example, restrictions on liberty and freedom of movement within the territory of a state (Article 12 of the ICCPR, Article 5 of the ECHR and Article 2 of Protocol 4 of the ECHR), and across international borders can prevent or seriously delay participation in an assembly.¹⁶⁸ Similarly, restrictions that impact upon a state's obligation to hold free elections (under Article 25 of the ICCPR¹⁶⁹ and Article 3, Protocol 1 of the ECHR) such as the detention of political activists or the exclusion of particular individuals from electoral lists,¹⁷⁰ can also indirectly curtail the right to freedom of assembly.
108. **Restrictions imposed during an assembly:** The role of the police or other law-enforcement personnel during an assembly will often be to enforce any prior restrictions imposed in writing by the regulatory body. No additional restrictions should be imposed by law-enforcement personnel unless absolutely necessary in light of demonstrably changed circumstances. On occasion, however, the situation on the ground may deteriorate (participants, for example, might begin using or inciting violence), and the authorities may have to impose further measures to ensure that other relevant interests are adequately safeguarded. In the same way that reasons must be adduced to demonstrate the need for prior restrictions, any restrictions imposed in the course of an assembly must be just as rigorously justified. Mere suspicions will not suffice, and the reasons must be both relevant and sufficient. In such circumstances, it will be appropriate for other civil authorities (such as an ombudsman's office) to have an oversight role in relation to the policing operation, and law-enforcement personnel should be accountable to an independent body. Furthermore, as noted in paras. 37 and 91, unduly broad discretionary powers afforded to law-enforcement officials may breach the principle of legality, given the potential for arbitrariness. The detention of participants during an assembly (on grounds that they have committed administrative, criminal or other offences) should meet a high threshold, given the right to liberty and security of person and the fact that any interference with freedom of assembly is inevitably time sensitive. Detention should be used only in the most pressing situations, when failure to detain would result in the commission of serious criminal offences.

109. **Sanctions and penalties imposed after an assembly:** The imposition of sanctions (such as prosecution) after an event may sometimes be more appropriate than the imposition of restrictions prior to or during an assembly. For example, the European Court of Human Rights has held that prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate. Any isolated outbreak of violence should be dealt with by way of subsequent prosecution or other disciplinary action instead of by prior restraint.¹⁷¹ It is noteworthy, however, that the Human Rights Committee and the European Court of Human Rights have on several occasions found subsequent sanctions to constitute disproportionate interference with the right to freedom of assembly or expression.¹⁷² As with prior restraints, the principle of proportionality also applies to liability arising after the event. Any penalties specified in the law should, therefore, allow for the imposition of minor sanctions where the offence concerned is of a minor nature.
110. **Defences:** Anyone charged with an offence relating to an assembly must enjoy the right to a fair trial. All provisions that create criminal or administrative liability must comply with the principle of legality (see paras. 35-38). Furthermore, organizers of and participants in assemblies should benefit from a “reasonable excuse” defence. For example, the organizer of an assembly should not face prosecution for either underestimating or overestimating the number of expected participants in an assembly if this estimate was made in good faith. Similarly, a participant in an assembly should not be held liable for anything done under the direction of a law-enforcement official¹⁷³ or for taking part in an unlawful assembly if the participant was not aware of the unlawful nature of the event. Furthermore, if there are reasonable grounds for non-compliance with the notification requirement, then no liability or sanctions should adhere.
111. Individual participants in any assembly who themselves do not commit any violent act should not be prosecuted, even if others in the assembly become violent or disorderly. As stated in the decision in *Ezelin v. France* (1991), “[i]t is not ‘necessary’ in a democratic society to restrict those freedoms in any way unless *the person in question* has committed a reprehensible act when exercising his rights.”¹⁷⁴
112. Organizers of assemblies should not be held liable for the failure to perform their responsibilities if they have made reasonable efforts to do so. Furthermore, organizers should not be held liable for the actions of participants or third parties, or for unlawful conduct that the organizers did not intend or directly participate in. Holding the organizers of an event liable would be a manifestly disproportionate response, since this would imply that organizers are imputed to have responsibility for acts by other individuals (including possible *agents provocateurs*) that could not have been reasonably foreseen.

5. Procedural Issues

Advance notification

113. It is not necessary under international human rights law for domestic legislation to require advance notification about an assembly. Indeed, in an open society, many types of assembly do not warrant any form of official regulation.¹⁷⁵ Prior notification should, therefore, only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.
114. The UN Human Rights Committee has held that a requirement to give prior notice of an assembly, while a *de facto* restriction on freedom of assembly, is compatible with the permitted limitations laid down in Article 21 of the ICCPR.¹⁷⁶ Similarly, the European Commission on Human Rights stated in *Rassemblement Jurassien* (1979) that: “Such a procedure is in keeping with the requirements of Article 11(1), if only in order that the authorities may be in a position to ensure the peaceful nature of the meeting, and accordingly does not as such constitute interference with the exercise of the right.”¹⁷⁷
115. It is good practice to require notification only when a substantial number of participants are expected or only for certain types of assembly. In some jurisdictions there is no notice requirement for small assemblies (see the extracts from the laws in Moldova and Poland, below), or where no significant disruption of others is reasonably anticipated by the organizers (such as might require the redirection of traffic).¹⁷⁸ Furthermore, individual demonstrators should not be required to provide advance notification to the authorities of their intention to demonstrate.¹⁷⁹ Where a lone demonstrator is joined by another or others, the event should be treated as a spontaneous assembly (see paras. 126-131).

Article 3, Moldova’s Law on Public Assemblies (2008): Definitions

“Assemblies with a small number of participants” are public assemblies that gather less than 50 persons.

Article 12(5), Moldova’s Law on Public Assemblies (2008): Exceptions from notification

It is not obligatory to notify local public authorities in the case of assemblies with a small number of participants.

Article 6, Poland's Law on Assemblies (1990)

*1. Assemblies organized in the open in areas accessible to unspecified individuals, hereinafter referred to as "public assemblies", must be reported in advance to the commune authority with competence *ratione loci* for the site of the assembly.*

2. If the assembly is to be held in the neighbourhood of a diplomatic representation/mission, consular offices, special missions or international organizations, which are covered by diplomatic immunities and privileges, the commune authority is obliged to notify the responsible Police commander and the Ministry of Foreign Affairs.

3. The commune council may specify areas where the organization of an assembly does not require notification.

116. Any notification process should not be onerous or bureaucratic, as this would undermine the freedom to assemble by discouraging those who might wish to hold an assembly. Furthermore, the period of notice should not be unnecessarily lengthy (normally no more than a few days prior to the event), but should still allow adequate time for the relevant state authorities to plan and prepare (for example, by deploying police officers, equipment, etc.),¹⁸⁰ for the regulatory body to give a prompt official response to the initial notification, and for the completion of an expeditious appeal to a tribunal or court should the legality of any restrictions imposed be challenged. While laws may legitimately specify a minimum period of advance notification for an assembly, any maximum period for notification should not preclude advance planning for assemblies. When a certain time limit is set out in the law, it should only be indicative.
117. The official receiving the notice should issue a receipt, explicitly confirming that the organizers of the assembly are in compliance with applicable notice requirements (see the example from Moldova, below). The notice should also be communicated immediately to all state organs involved in the regulatory process, including the relevant law-enforcement agencies.

Article 10(3), Moldova's Law on Public Assemblies (2008)

10(3) The local public administration authority shall register the prior declaration and issue to the organizer a stamped copy, which should contain the number, date and hour of registration of the declaration.

Notification, not authorization

118. Any legal provisions concerning advance notification should require the organizers to submit a notice of the intent to hold an assembly, but not a request for permission.¹⁸¹ A permit requirement is more prone to abuse than a notification requirement, and may accord insufficient value to the fundamental freedom to assemble and the corresponding principle that everything not regulated by law should be presumed to be lawful. It is significant that, in a number of jurisdictions, permit procedures have been declared unconstitutional.¹⁸²
119. Nonetheless, a permit requirement based on a legal presumption that a permit for the use of a public place will be issued (unless the regulatory authorities can provide evidence to justify a denial) can serve the same purpose as advance notification.¹⁸³ Those countries in which a permit is required are encouraged to amend domestic legislation so as to require only notification.¹⁸⁴ Any permit system must clearly prescribe in law the criteria for issuance of a permit. In addition, the criteria should be confined to

considerations of time, place and manner, and should not provide a basis for content-based regulation. As emphasized in paragraphs 94-98, the authorities must not deny the right to assemble peacefully simply because they disagree with the merits of holding an event for the organizers' stated purpose.¹⁸⁵

120. There should be provision in law that, in the event of a failure on the part of the authorities to respond promptly to notification for an event, the organizers of a public assembly may proceed with the activities according to the terms provided in the notification without restriction (see the example from the Armenian law, below). Even in countries where authorization, rather than notification, is still required, authorization should be presumed granted if a prompt response is not given.

Article 12, Armenia's Law on Conducting Meetings, Assemblies, Rallies and Demonstrations (2008)

1. The authorized body shall consider the notification within 72 hours of receiving it, in the order in which notifications have been received.

...

8. Should the authorized body not issue a decision prohibiting the convention of the mass public event within 72 hours of receiving the notification, the organizers shall have the right to conduct the mass public event on the terms and conditions set forth in the notification.

121. If more people than anticipated by the organizers gather at an assembly for which notification has been given, the relevant law-enforcement agencies should facilitate the assembly so long as the participants remain peaceful (see also Defences, in paras. 110-112).
122. **Simultaneous assemblies:** All persons and groups have an equal right to be present in public places to express their views. Where notification is submitted for two or more assemblies for the same place and time, the events should be held together if they can be accommodated.¹⁸⁶ If this is not possible (due, for example, to lack of space), the parties should be encouraged to engage in dialogue to find a mutually satisfactory resolution. Where such a resolution cannot be found, the authorities may seek to resolve the issue by adopting a random method of allocating the events to particular locations, so long as this does not discriminate between different groups. This may, for example, be a "first come, first served" rule, although the abuse of such a rule (where notification about an assembly is deliberately submitted early to block access to other events) should not be allowed. The authorities may even hold a ballot to determine which assembly should be held in the location provided in the notification (see the example from the law in Malta, below). A prohibition against conducting public events in the same place and at the same time of another public event where they can both be reasonably accommodated is likely to be a disproportionate response.

Article 5(3), Malta's Public Meetings Ordinance (1931)

When two or more persons, whether as individuals or on behalf of an association, simultaneously give notice of their intention of holding a meeting in the same locality and at the same time, preference shall be given to the person whose name is extracted in a draw held by the Commissioner of Police or any other Police officer deputed by him.

123. **Counter-demonstrations:** Persons have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at another public assembly.¹⁸⁷ On such occasions, the coincidence in time and venue of the two assemblies is likely to be an essential part of the message to be conveyed by the second assembly. Such related simultaneous assemblies should be facilitated so that they occur within sight and sound of their target in so as far as this does not physically interfere with the other assembly (see paras. 33, 45 and 101).
124. Nonetheless, as clearly stated in the European Court of Human Rights case of *Plattform 'Ärzte für das Leben' v. Austria* (1988), "the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate".¹⁸⁸ Thus, because each person or group has a right to express their views undisrupted by others, counter-demonstrators may not disrupt the activities of those who do not share their views. Emphasis should be placed on the state's duty to prevent disruption of the main event where counter-demonstrations are organized.¹⁸⁹ Furthermore, a clear question is raised where the intention of the organizers of a counter-demonstration is specifically to prevent the other assembly from taking place – effectively, to deny the rights of others. In such cases, Article 5 of the ICCPR and Article 17 of the ECHR may be engaged, and the counter-demonstration will not enjoy the protection afforded according to the right to freedom of peaceful assembly (see para. 15).

Exceptions from the notification process

125. It will be up to the legislature in each jurisdiction to determine whether there should be any specific exceptions from the notification process. Exceptions must not be discriminatory in effect and should be targeted towards a class of assembly rather than a class of organizer.
126. **Spontaneous assemblies:** A spontaneous assembly is generally regarded as one organized in response to some occurrence, incident, other assembly or speech, where the organizer (if there is one) is unable to meet the legal deadline for prior notification, or where there is no organizer at all. Such assemblies often occur around the time of the triggering event, and the ability to hold them is important because delay would weaken the message to be expressed.¹⁹⁰
127. While the term "spontaneous" does not preclude the existence of an organizer of an assembly, spontaneous assemblies may also include gatherings with no identifiable organizer. Such assemblies are coincidental and occur when a group of persons gathers at a particular location with no prior advertising or invitation. These are often the result of some commonly held knowledge or knowledge disseminated via the Internet about a particular event (such as a visit by a foreign head of state).¹⁹¹ Numbers may be swelled by passers-by who choose to join the assembly, although it is also possible that, once a crowd begins to gather, mobilization can be achieved by various forms of instantaneous communication (telephone, text message, word of mouth, the Internet, etc). Such communication should not, of itself, be interpreted as evidence of prior organization. Where a lone demonstrator is joined by another or others, the gathering should be treated similarly to a spontaneous assembly.

Moldova's Law on Public Assemblies (2008):

Article 3, Main definitions

For the purposes of this Law: (...) a spontaneous assembly shall mean an assembly, that has been initiated and organized as a direct and immediate response to social events and which, in the opinion of participants, cannot be postponed and, as a result, for which the usual notification procedure is not possible...

Article 12, Exceptions from notification

(1) In the cases of spontaneous assemblies, notification is allowed without formal written confirmation or within the provided 5 days prior the organization of the assembly; it is sufficient to communicate the place, data, time, scope and the organizers

(2) The organizers exercise the right to spontaneous assembly provided in (1) with good-faith and inform the local public authorities immediately about their intention as it becomes known in order to facilitate the provision of the necessary services by the local public authorities.

Article 10(1), Armenia's Law on Conducting Meetings, Assemblies, Rallies and Demonstrations (2008)

With the exception of spontaneous public events, mass public events may be conducted only after notifying the authorized body in writing.

Section 6(2)(b), Northern Ireland's Public Processions Act (1998)

Where notification is not "reasonably practicable" notification should be given "as soon as it is reasonably practicable."

128. Spontaneous assemblies should be lawful and are to be regarded as an expectable (rather than exceptional) feature of a healthy democracy. Of course, the ability of the organizers of an assembly to meet a deadline for prior notification will depend on how early the deadline is set (and these requirements vary significantly among participating States). Laws regulating freedom of assembly should explicitly provide either for exemption from prior-notification requirements for spontaneous assemblies (where giving advance notice is impracticable) or for a shortened notification period (whereby the organizer must notify the authorities as soon as is practicable). Such an exception would only apply in circumstances where an organizer is unable to meet the legally established deadline.¹⁹² It is appropriate that organizers should inform the authorities of their intention to hold an assembly as early as possible. Only in this way can the authorities reasonably be expected to fulfil their positive obligations to protect the assembly, maintain public order and uphold the rights and freedoms of others.
129. The European Court of Human Rights has clarified what it considers should constitute such "special circumstances" (i.e., when the right to hold spontaneous events may override the obligation to give prior notification). These circumstances arise "if an immediate response to a current event is warranted in the form of a demonstration. In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete".¹⁹³
130. Whether a specific organizer was unable to meet the deadline for prior notification or whether a delay in holding the assembly would have rendered its message obsolete are questions of fact and must be decided according to the particular circumstances of each case. For example, even within a sustained, long-running protest campaign (which might ordinarily suggest that timely notification would be possible) there may be events of urgent or special significance to which an immediate response by way of a spontaneous assembly would be entirely justified.
131. Even where no such exemption for spontaneous assemblies exists in the law, the authorities should still protect and facilitate any spontaneous assembly so long as it is peaceful in nature. The European Court of Human Rights has stated that "a decision to disband such assemblies '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'".¹⁹⁴

Decision-making and review processes

132. The regulatory authority should make publicly available a clear explanation of the decision-making procedures. It should fairly and objectively assess all available information to determine whether the organizers and participants in an assembly for which they have received notification are likely to conduct the event in a peaceful manner and to ascertain the probable impact of the event on the rights and freedoms of non-participant stakeholders. In doing so, it may be necessary to facilitate meetings with the event organizers and other interested parties.
133. The regulatory authority should also ensure that any relevant concerns raised are communicated to the event organizers, who should be offered an opportunity to respond to any concerns raised. This is especially important if these concerns might later be cited as the basis for imposing restrictions on the event. Providing the organizers with such information allows them the opportunity to address the concerns, thus diminishing the potential for disorder and helping foster a co-operative, rather than confrontational, relationship between the organizers and the authorities.
134. The organizers of an assembly, the designated regulatory authorities, law-enforcement officials and other parties whose rights might be affected by an assembly should make every effort to reach mutual agreement on the time, place and manner of an assembly. If, however, agreement is not possible and no obvious resolution emerges, negotiation or mediated dialogue may help reach a mutually agreeable accommodation in advance of the date provided in the notification for the assembly. Genuine dialogue between relevant parties can often yield a more satisfactory outcome for everyone involved than formal recourse to the law. The facilitation of negotiations or mediated dialogue can usually best be performed by individuals or organizations not affiliated with either the state or the organizer. The presence of these parties' legal representatives may also assist in facilitating discussions between the organizers of the assembly and law-enforcement authorities. Such a dialogue is usually most successful in establishing trust between parties if it is begun at the earliest possible opportunity. While not always successful, it serves as a preventive tool to help avoid the escalation of conflict or the imposition of arbitrary or unnecessary restrictions.
135. Any restrictions placed on an assembly should be communicated in writing to organizers of the event, with a brief explanation of the reason for each restriction (noting that these explanations must correspond with the permissible grounds enshrined in human rights law and as interpreted by the relevant courts). The burden of proof should be on the regulatory authority to show that the restrictions imposed are reasonable in the circumstances.¹⁹⁵ Such decisions should also be communicated to the organizers within a reasonable time-frame – *i.e.*, sufficiently in advance of the date of a proposed event to allow the decision to be appealed to an independent tribunal or court before the date provided in the notification for the event.
136. The regulatory authority should publish its decisions so that the public has access to reliable information about events taking place in the public domain. This might be done, for example, by posting decisions on a dedicated website.¹⁹⁶
137. The organizers of an assembly should have recourse to an effective remedy through a combination of administrative and judicial review. The availability of effective administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. Any administrative review procedures must be sufficiently prompt to enable judicial review to take place

once administrative remedies have been exhausted, prior to the date of the assembly provided in the notification.

138. Ultimately, the organizers of an assembly should be able to appeal the decision of the regulatory authority to an independent court or tribunal. This should be a *de novo* review, empowered to quash the contested decision and to remit the case for a new ruling. The burden of proof and justification should remain on the regulatory authorities. Any such review must also be prompt, so that the case is heard and the court ruling published before the date for the planned assembly (see para. 66). This makes it possible to hold the assembly if the court invalidates the restrictions.¹⁹⁷ To expedite this process, the courts should be required to give priority to appeals concerning restrictions on assemblies. The law may also provide for the option of granting organizers injunctory relief. That is, in the case that a court is unable to hand down a final decision prior to the planned assembly, it should have the power to issue a preliminary injunction. The issuance of an injunction by the court in the absence of the possibility of a final ruling must necessarily be based on the court's weighing of the consequences of such an issuance.

Article 14(2), Georgia's Law on Assemblage and Manifestations (1997, as amended 2009)

A decision of a local governance body forbidding the holding of an assemblage or manifestation may be appealed in a court. The court shall hand down a final decision within two working days.

Article 7, Kyrgyz Republic's Law on the Right of Citizens to Assemble Peacefully, without Weapons, and to Freely Conduct Meetings and Demonstrations (2002)

... A decision of bodies of local State administration or local self-government ... is subject to court appeal, and shall be considered by the court within 24 hours if less than 48 hours remains before the planned public assembly.

139. The parties and the reviewing body should have access to the evidence on which the regulatory authority based its initial decision (such as relevant police reports, risk assessments or other concerns or objections raised). Only then can the proportionality of the restrictions imposed be assessed fully. If such access is refused by the authorities, the parties should be able to obtain an expeditious judicial review of the decision to withhold the evidence.¹⁹⁸ The disclosure of information enhances accessibility and transparency, as well as the prospects for the co-operative and early resolution of any contested issues.
140. It is good practice for the regulatory authority to have a legal obligation to keep the regulatory framework under review and to make recommendations for its improvement. It is also good practice for the regulatory authority to submit an annual report on its activity (including relevant statistics on, for example, the number of assemblies for which it received notification and the number that were restricted) to an appropriate supervisory body, such as a national human rights institution, ombudsman or parliament.¹⁹⁹ At the very least, the regulatory authority should publish annual statistics and make these accessible to the public.²⁰⁰