

# FREEDOM OF ASSEMBLY PROCEDURES OF PERMISSION AND NOTIFICATION

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## I. Introduction

The right to freedom of peaceful assembly is among the most important human rights. It allows people to “gather publicly or privately and collectively express, promote, pursue and defend common interests.”<sup>1</sup> The Freedom of Assembly includes the right to participate in peaceful assemblies, meetings, protests, strikes, sit-ins, demonstrations and other temporary gatherings for a specific purpose.

Despite protections under international law for peaceful assemblies, in recent years an increasing number of countries around the world are restricting the right. The International Center for Not-for-Profit Law (ICNL) writes that these countries are suffering from a pandemic called “agoraphobia”, which literally means the fear of an agora, or “place of assembly.”<sup>2</sup> Since 2013, more than 20 countries from Australia to Egypt to Uganda have imposed legal measures that restrict people from exercising their right to freedom of assembly.<sup>3</sup>

One of the most common ways that countries restrict assemblies is to enact laws that require organizers and participants to receive permission from the government authorities in advance of holding the assembly. The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Mr. Maina Kiai, however does not consider the permission requirement a good practice and says that the exercise of the right to freedom of peaceful assembly should be “governed at most by a regime of prior notification regarding the holding of peaceful assemblies, in lieu of a regime of authorization.”<sup>4</sup>

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<sup>1</sup> See UN Special Rapporteur’s unofficial webpage: <http://freeassembly.net/about/freedoms/>

<sup>2</sup> Doug Rutzen and Brittany Grabel, “Fighting for the Public Square,” Foreign Policy, April 9, 2014.

<sup>3</sup> Australia’s Summary Offences Act, 2014, gives police in Victoria enhanced powers to disperse protesters who are blocking access to buildings, obstructing people or traffic, or who the police believe are “reasonably suspicious” of being violent. It also allows courts to issue an order preventing protestors who are repeatedly told to “move on” from entering a particular public space for up to 12 months, with a maximum penalty of two years imprisonment for violators. Egypt’s Law on the Right to Public Meetings, Processions, and Peaceful Demonstrations requires assembly organizers to notify the Interior Ministry at least three days prior to assembling, allows the Ministry to ban and disperse peaceful demonstrations on vague grounds, and explicitly provides for the use of lethal force in dispersing assemblies. Uganda’s Public Order Management Act, 2013, provides broad discretion to security forces to control and disband assemblies.

<sup>4</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, April 24, 2013.

This article focuses on the legality of permission requirements and discusses other practices that facilitate the exercise of the right to peaceful assembly.<sup>5</sup> Specifically, the article explains:

- What **legal standards** are used to determine whether a permission requirement or notification procedure violate international law;
- What is a **permission requirement** and how it is different from the related but less restrictive alternative—a notification procedure;
- What are the **best practices** related to implementing the notification procedure; and
- What are the **responsibilities of police and law enforcement** in protecting the freedom of assembly when people violate the permission requirement or hold spontaneous assemblies where notification is not possible;

## II. Legal Standards of Permission and Notification

The right to freedom of assembly is enshrined in various international legal instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Article 21 of the ICCPR states:

*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 (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

According to the Inter-American Commission on Human Rights (IACHR):

*[t]he rights to freedom of assembly and of association have been broadly recognized as significant individual civil as well as political rights that protect against arbitrary interference by the state when persons choose to associate with others, and are fundamental to the existence and functioning of a democratic society.<sup>6</sup>*

There are very limited conditions under which restrictions on the right to peaceful assembly are permissible under international law. Restrictions by the state are justifiable only if they are carried out “in conformity with the law” and in the pursuit of one of the legitimate aims “necessary in a democratic society” set forth in Article 21 of the ICCPR. These aims include national security, public order, public safety, the protection of health, the protection of morals, and the protection of the rights and freedoms of others. Each restriction is subject to a rigorous legal analytical test, as defined by Article 21 of the ICCPR.

For instance, “public order” restrictions may 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. They may not, however, be imposed to prevent controversial speech and political criticism, even where this might engender a hostile reaction from others. Similarly, restrictions based on “national security” or “public safety” only refer to situations involving an immediate and violent threat to the nation or to its territorial integrity or political independence.

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<sup>5</sup> For a discussion of freedom of assembly in the online world, see Doug Rutzen and Jacob Zenn, “Association and Assembly in the Digital Age,” *The International Journal of Not-for-Profit Law* Volume 13, Issue 4, December 2011, available at: [http://www.icnl.org/research/journal/vol13iss4/art\\_1.htm](http://www.icnl.org/research/journal/vol13iss4/art_1.htm).

<sup>6</sup> Inter-American Commission Report on Terrorism available: <http://www.cidh.oas.org/Terrorism/Eng/part.p.htm>.

Nationwide limitations imposed on the basis of merely isolated or localized threats cannot be justified, therefore, and are impermissible.

Advance notification of public gatherings is a fairly common regulatory procedure around the world. It has been upheld by the UN Human Rights Committee and regional human rights bodies, even though it imposes an additional restriction and responsibility on organizers to notify the authorities of an upcoming assembly. In *Kivenmaa v. Finland*, for example, the Committee held that “a requirement to pre-notify a demonstration would normally be for reasons of national security, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”<sup>7</sup>

The UN Special Rapporteur, Mr. Maina Kiai, also states that the notification procedure can be considered necessary to “allow the state authorities to facilitate the exercise of the right to freedom of peaceful assembly and take measures to protect public safety and order and the rights and freedoms of others.”<sup>8</sup> Mr. Kiai, however, emphasizes that notification should only be required “for large assemblies or for assemblies where a certain degree of disruption is anticipated.”<sup>9</sup> Like the UN Human Rights Committee, Mr. Kiai believes that such measures include preparing police to protect the assembly participants and arrange other public services, such as post-assembly clean-up.

The key difference between the notification procedure and the permission requirement, therefore, is that the former is based on the legal presumption that no permit is necessary to exercise the freedom of assembly. The goal of a notification procedure is to inform a competent authority about plans to hold a peaceful assembly in advance, in order to trigger the positive obligations of the state to facilitate the exercise of freedom of peaceful assembly. It is consistent with the ‘principle of presumption’ in favor of holding assemblies outlined in the OSCE/ODIHR Guidelines on Assembly, which says:<sup>10</sup>

*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.*

In contrast, the underlying rationale for a permission requirement is much more tenuous because it places full power with the state. Where there is a “permission requirement,” the authorities *give* approval for using public space for an assembly, which contravenes the essence of the nature of freedom for peaceful assembly. As noted above, in some jurisdictions, such as in **Georgia** but also countries like **Zambia** and **Tanzania**, the permission system has been

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<sup>7</sup> UN Human Rights Committee, Communication No. 412/1990, UN Doc. CCPR/ C/50/D/412/1990 (1994).

<sup>8</sup> Many of the best practices related to notification have been clearly explained in the second report of the UN Special Rapporteur from April 2013 on “the rights to freedom of peaceful assembly and of association,” which was submitted to the UN Human Rights Council pursuant to Council resolutions 15/21 and 21/16.

<sup>9</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, April 24, 2013.

<sup>10</sup> See OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, Second edition (Warsaw/Strasbourg, 2010). 165.

declared unconstitutional because it undermines the value of the fundamental freedom to assemble peacefully.<sup>11</sup>

### III. Explaining Permission and Notification in Practice

#### *Permission Requirement*

A “permission requirement” is when organizers of an assembly are legally required to apply for permission to the government in advance of an assembly and receive authorization to hold the assembly. The application for permission usually stipulates the purpose, date, and place of the proposed assembly and requires the organizers provide their identification documents. The number of days required to apply for permission in advance of an assembly differs in various countries. For example, :

- In **Turkey**, all of the members of the organizing committee of an assembly must sign a declaration 48 hours prior to the assembly and submit it to the district governor’s office during work hours;<sup>12</sup>
- In Dhaka, the capital of **Bangladesh**, “organizers of any assembly, meeting or public gathering in open public places, such as streets, must submit an application to the Police Commissioner seven days before an assembly”;<sup>13</sup>
- In **Malaysia**, notice of an assembly must be given to the police within 10 days before the assembly date.”
- In **Tajikistan**, organizations must notify the authorities 15 days before a demonstration after which the authorities have three days to decide whether to permit or ban the assembly.<sup>14</sup>

The authorities often respond to the application and inform the organizers whether the assembly is permitted or provide a reason, which is sometimes legally justifiable, why the assembly is not allowed. In several countries, however, the authorities are able to “sit on” an application and not respond, which is equivalent to rejection when there is no right to appeal. For example,:

- In **Peru**, “if public authorities do not respond specifically to the petition within a given period of time, then the petition must be deemed denied (negative administrative silence).”<sup>15</sup>
- In **Ecuador**, “...there is no fixed period of time in which the regulatory authority must respond to the application.”<sup>16</sup>

A legally better practice is that once an application for permission is submitted, the authorities have a specified period of time within which they must respond to the application. The failure to respond to the application results in the application being considered accepted, rather than denied like in the Peru and Ecuador examples above. For example:

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<sup>11</sup> The Constitutional Court of Georgia has annulled part of a law (Article 8, para 5) that allowed a body of local government to reject a notification (thus, effectively creating a system of prior license rather than prior notification), Georgian Young Lawyers’ Association Zaal Tkeshelashvili, Lela Gurashvili and Others v. Parliament of Georgia (5 November 2002) N2/2/180-183.

<sup>12</sup> Turkey (Article 10 of Law No. 2911 on Meetings and Demonstrations).

<sup>13</sup> <http://www.forum-asia.org/?p=16237>

<sup>14</sup> Tajikistan (Article of Law on Assemblies, Meetings, Demonstrations and Marches of 1998).

<sup>15</sup> See <http://www.icnl.org/research/monitor/peru.html>

<sup>16</sup> See <http://www.icnl.org/research/monitor/ecuador.html>

- In **Cambodia** “[i]f the competent municipal or provincial territorial authorities fail to respond [to an application] within three days, then that implies that the competent municipal or provincial territorial authorities have approved the assembly.”<sup>17</sup>
- In **Colombia**, if there is no response [to an application] by the authority within 24 hours, it is understood that the assembly may take place.<sup>18</sup>

In many countries, if the authorities reject an application, then the organizers have a period of time within which they can submit an appeal to the same or separate government authorities.<sup>19</sup> However, there are also countries where a first-time rejection of an application is final, with no right to appeal whether or not the authorities provide a justification for the denial.

#### *Contrast with Notification Procedure*

The notification procedure is different than the permission requirement because it only requires organizers of an assembly to notify, or inform, the authorities that an assembly will take place. The organizers may proceed with holding the assembly without waiting for approval or consent from the authorities. The notification system does *not* depend on any authorization that either allows or prohibits the assembly.<sup>20</sup>

The following are examples of the legal provisions of the notification system that in practice would facilitate peaceful assemblies:

- In **Panama**, holding a peaceful meeting or assembly requires notice addressed to the Mayor and must be provided 24 hours prior to the date of the meeting or assembly. The notification does not require authorization from the Mayor’s office; therefore the notice cannot be denied. The Mayor is simply supposed to issue a statement whereby he declares that he has been notified of the assembly.<sup>21</sup>
- In addition, in **Georgia**, the Constitutional Court annulled part of the Law on Assemblies and Manifestations that allowed a body of local government to reject a notification.<sup>22</sup> The court’s reasoning was that such a law effectively created a system of prior permission rather than prior notification.

There are however, countries where the authorities may choose to take the case to court and request a complete ban of the assembly, which thus undermines the notification. For example,

- In **Ukraine**, local governments can put forward in court a claim for banning an assembly. In 2011, 88% of such requests were accepted, thus overriding the notification procedure and rendering it useless.<sup>23</sup>

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<sup>17</sup> See <http://www.icnl.org/research/monitor/cambodia.html>

<sup>18</sup> See <http://www.icnl.org/research/monitor/colombia.html>

<sup>19</sup> See <http://www.icnl.org/research/monitor/venezuela.html>

<sup>20</sup> See *Inspector-General of Police v All Nigeria Peoples Party and Others* (2007) AHRLR 179 (NgCA 2007) where the Court of Appeal of Nigeria in the Abuja Judicial Division held “The Police Order Act relating to the issuance of police permit cannot be used as a camouflage to stifle the citizens’ fundamental rights in the course of maintaining law and order”; and *Mulundika and Others v. The People*, Supreme Court of Zambia, 1BHRC 199 (10 January 1996).

<sup>21</sup> Article 38, National Constitution.

<sup>22</sup> Article 8, para 5.

<sup>23</sup> See report Center for Political and Legal Reforms, *Freedom of Peaceful Assembly in Ukraine: Administrative courts dimension*, 2011 <http://www.khpg.org/en/index.php?id=1362731498>

In some countries where the law mandates the notification procedure exists, it is only required to notify the authorities if the organizers intend to use public roads or areas or when special facilities, such as stands or barriers, must be erected for the assembly. For example:

- In **Northern Ireland**, the Parades Commission cannot ban assemblies, but may place restrictions “of a parade from a particular area, a route restriction, a restriction on music or the exclusion of a previously badly behaved group from a parade.”<sup>24</sup>

Although the notification procedure is in force in many countries, including **Armenia, Austria, Finland, Moldova, Panama** and **Serbia**, among others, it is important to highlight that some countries claim to have a “notification” procedure in name, but the implementation is as if it were a “permission” requirement. For example,

- **Russia** requires the “promoter” to provide notification to the government for any public event, except for a rally or picketing held by a single participant, between 10 and 15 days prior to holding the public event. Based on governmental statements and crackdowns of unauthorized protests, however, the notification requirement functions the same as advance permission in practice.<sup>25</sup>

- The Public Order Act in **Zambia** requires organizers of public meetings to “notify” the police seven days in advance of the meeting. Article 5(8) of the Act, however, speaks not of notice but of permitting, when it authorizes the police to “stop any procession for which no permit has been issued.” Moreover, Article 7 provides that any assembly “for which a permit is required ... and which takes place without the issue of such permit ... shall be deemed to be an unauthorized assembly” and all those taking part in the assembly may be arrested and liable to criminal penalties. In sum, the “notification” requirement is tantamount to a permitting process.<sup>26</sup>

### Best Practices for Permission and Notification

The best practice for permission requirements and notification procedures is simple: it is best for a government to explicitly state that no permission is required to hold a peaceful assembly. For example,

- In **Lebanon**, the Public Assemblies Law does not require prior authorization before a public assembly may take place and explicitly provides that no permit is required (Lebanon does, however, require 48-hours prior notification to the authorities before an assembly).<sup>27</sup>

In cases where a state does not have a permission requirement but adopts the notification procedure, there are number of measures that the state should take in order to ensure the notification procedure remains simply a notification, rather than permission, and is as enabling as possible.

First, it is a best practice to **only require notification when a substantial number of participants are expected to attend an assembly or when the organizers reasonably anticipate a significant disruption to other people**, such as if the assembly might require the

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<sup>24</sup> See <https://www.paradescommission.org/FAQs.aspx>

<sup>25</sup> Russian Federal Law no.54- FZ of June 19, 2004 on Rallies, Meetings, Demonstrations, Marches and Picketing.

<sup>26</sup> See translation available at [http://www.saflii.org/zm/legis/consol\\_act/poa133/](http://www.saflii.org/zm/legis/consol_act/poa133/).

<sup>27</sup> Public Assemblies Law, Article 1.

redirection of traffic.<sup>28</sup> The Special Rapporteur emphasized that “prior notification should ideally be required only for large meetings or meetings which may disrupt road traffic.”<sup>29</sup> For example:

- In **Poland**, there is no notice requirement for small assemblies but for assemblies of more than 15 people, the organizers are required to notify the authorities three days in advance.<sup>30</sup>
- In **Latvia**, there is normally a three-day notification requirement, but it becomes seven days where the assembly will include the “movement of traffic.”<sup>31</sup>
- In **Kenya**, the threshold that triggers the notification requirement is when 10 people are present at an assembly.<sup>32</sup>
- In **Moldova**, notification is required five days in advance of an assembly, but only when more than 50 people are expected to be present.<sup>33</sup>

Second, the notification procedure **should not be onerous or overly bureaucratic in a way that would discourage people from holding an assembly.** A notification would be “unduly bureaucratic,” according to the OSCE/ODIHR Panel of Experts, “if any of the following requirements is imposed on the organizers: that there be more than one named organizer; that only registered organizations are considered as legitimate organizers; that formal identity documents, such as passports or identity cards, be produced; that identification details of others involved in the event, such as stewards be provided; that reasons for holding an assembly, bearing in mind the principle of non-discrimination, be given; and that the exact number of participants, which is difficult to predict, be given.”<sup>34</sup>

The UN Special Rapporteur, Mr. Miana Kiai, also makes it clear that notification should be submitted to a single “designated primary authority” and in the “in the simplest and fastest way, by filling, for instance, a clear and concise form, available in the main local language(s) spoken in the country, preferably online to avoid uncertainties and possible delays in postage.”<sup>35</sup> For example:

- In **Panama**, notification can be submitted to the local mayor.<sup>36</sup>
- In **Russia**, for specific locations, such as public parks, which have been designated as spaces for gatherings, the notification can be submitted online.<sup>37</sup>
- In **Estonia and Hungary** a notification can be sent to police by a fax machine.

Moreover, the information required within the notification should only have to include “the date, time, duration and location or itinerary of the assembly, and the name, address and

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<sup>28</sup> Neil Jarman and Michael Hamilton, “Protecting Peaceful Protest: The OSCE/ODIHR and Freedom of Peaceful Assembly”, *Journal of Human Rights Practice*, Vol. 1, No. 2, 2009, p. 218.

<sup>29</sup> Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, A/HRC/20/27, para. 29, May 21, 2013.

<sup>30</sup> Law on Assemblies of Poland, 2012, Chapter 1, Article 2.

<sup>31</sup> Law on Meetings, Street Processions and Pickets, Section 2 (13).

<sup>32</sup> Sections 5(1) and 5(2) of the Public Order Act.

<sup>33</sup> Law no. 26-XVI of 22 February 2008 on Assemblies.

<sup>34</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, April 24, 2013.

<sup>35</sup> OSCE/ODIHR Panel of Experts.

<sup>36</sup> Article 38, National Constitution.

<sup>37</sup> See <http://www.park-gorkogo.com/about/hydepark/>.

contact details of the organizer.”<sup>38</sup> The OSCE/ODIHR Guidelines also say that it is the responsibility of the primary authority receiving the notification, not the organizations, to communicate the details of the notification to all relevant bodies, including if possible to post regulations on the Internet.<sup>39</sup>

Third, **the period of time before an assembly that the organizers must provide notice to the authorities should not be excessively long but still allow time for the state authorities to plan and prepare for the assembly**, including deploying police officers and equipment to protect the assembly, if necessary. As the European Court said in *Berladir and Others v. Russia*, “[p]rior notification serves not only the aim of reconciling the right of assembly with the rights and lawful interests (including the freedom of movement) of others, but also the aim of prevention of disorder or crime”.<sup>40</sup> The notification period suggested by the Venice Commission is four days.<sup>41</sup> Similarly, the Venice Commission states a shorter notification period than four days could hamper the ability of the public authority to exercise its positive obligations arising from the Constitution and Article 11 of the European Convention, in particular with regard to the “protection of others.” However, the UN Special Rapporteur recommends that the notification procedure “be subject to a proportionality assessment, not unduly bureaucratic and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place.”<sup>42</sup>

Fourth, **once organizers have notified the designated primary authority of their intention to hold an assembly, the primary authority should issue “a receipt acknowledging that timely notification has been submitted.”** Although no specific time frame is recommended by the UN Special Rapporteur for a response to the application, Mr. Kiai says that it should “be provided in an expeditious manner.”<sup>43</sup> Moreover, if the organizers do not hear a response from the authority “prior to the designated time for holding the assembly, it should be assumed that said assembly does not present any problem.”<sup>44</sup>

Fifth, **organizers should be given the possibility of an expedited appeal procedure in case of rejection**, with a view to obtaining a judicial decision by an independent and impartial court prior to the notified date of the assembly. The decision of the regulatory authority and of the appeal court should be published for the purposes of transparency and fairness, possibly on a specific website. If the assembly is restricted or prohibited altogether by the authority, the reasons for the prohibition should be in compliance with international human rights norms and standards.

Sixth, **it is the responsibility of the state to ensure that officials making decisions concerning the regulation of the right to freedom of assembly are fully aware of and understand the human rights issues bearing upon their decisions.**<sup>45</sup> Consistent with the

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<sup>38</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, April 24, 2013.

<sup>39</sup> OSCE/ODIHR Panel of Experts.

<sup>40</sup> *Berladir and Others v. Russia*, (Application no. 34202/06), Judgment of July 10, 2012, Para. 42.

<sup>41</sup> Para. 62, Opinion 638/2011 of October 17, 2011 of the Venice Commission.

<sup>42</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, April 24, 2013.

<sup>43</sup> *Ibid.*

<sup>44</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, April 24, 2013.

<sup>45</sup> OSCE Guidelines.

“Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,” this includes providing officials with periodic training on existing and emerging human rights case law and ensuring that the regulatory authority is adequately staffed and resourced to effectively fulfill its obligations in a way that enhances cooperation between the organizer and authorities.<sup>46</sup> In addition, states can hold officials liable for unlawful restrictions imposed on assemblies when officials are responsible for unnecessary bans. Moreover, states should prescribe that law enforcement authorities who violate the rights to freedom of peaceful assembly can be personally and fully accountable for such violations by an independent and democratic oversight body and courts of law, as in **Bulgaria, Estonia, Kyrgyzstan, Portugal, Republic of Moldova, Serbia and Spain**).<sup>47</sup>

#### IV. Responsibilities of Police and Law Enforcement

The role of law enforcement officials in protecting assemblies extends beyond recognizing the existence of the right to assembly but also to positively safeguarding the right. This obligation derives from the state’s general duty to secure to everyone within their jurisdiction the rights and freedoms defined in the ECHR.<sup>48</sup> In safeguarding the freedom of assembly, there are situations where law enforcement officials should *not* enforce the permission requirement.

The permission requirement is often used to impose liability on organizers of an assembly and to prohibit or make it more difficult the holding of assemblies. Yet, even where the restrictive permission requirements exists, the repercussions on organizers for not seeking and receiving authorization should not amount to a penalty on them or lead to any law enforcement response. 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.

So long as an assembly remains peaceful, the police and law enforcement personnel should not disperse it. Instead of dispersing an assembly, police have the duty to remove violent individuals from the crowd in order to allow protesters to exercise their basic rights to assemble and express themselves peacefully. The dispersal of assemblies should only be a measure of last resort and be governed by rules informed by international standards.<sup>49</sup> These rules need not be elaborated in legislation but should be expressed in domestic law-enforcement guidelines that are required under national legislation. The guidelines should specify the circumstances that warrant dispersal and the official who is entitled to issue dispersal orders such as only police officers of a certain rank and above.<sup>50</sup>

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<sup>46</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>47</sup> Human Rights Council Twenty-sixth session Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum Mission to the Republic of Rwanda, June 10, 2014.

<sup>48</sup> Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report on the rights to freedom of peaceful assembly and of association at the 20<sup>th</sup> session of the Human Rights Council

<sup>49</sup> Summary of the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests prepared by the Office of the United Nations High Commissioner for Human Rights, A/HRC/19/40, December 19, 2011.

<sup>50</sup> Ibid.

For example, in **Scotland**, it is a “matter for senior police officers to authorise when, and in what circumstances, the powers of dispersal can be exercised within their locality.”<sup>51</sup>

According to this approach, the police are tasked with protecting rights and facilitating, rather than frustrating, assemblies, while working to diffuse tensions that may arise and preventing an escalation of the situation. Several countries that follow this approach have also formalized the role of the so-called “safety triangle” during demonstrations, which is aimed at averting risks and ensuring smooth management of the assembly. The approach is based on continuous communication and interaction between the organizers of the protest and the local or state authorities and police.

### Spontaneous assemblies

The most important exception to the notification procedure is that of spontaneous assemblies. These assemblies are organized in response to an incident where the organizer is unable to comply with the legal deadline for prior notification, or where there is no organizer of the assembly at all. They occur at the time of a “triggering event,” and the ability to hold an assembly at that time is important because any delay would weaken the message that the participants in the assembly want to express.<sup>52</sup>

Because these assemblies occur when a group of people gather at a location without prior invitation, the numbers of participants may increasingly swell as “uninvited” passers-by join the assembly. In some cases, further mobilization occurs once a crowd begins to gather and people see the event on television news or information about the event spreads via telephone, text message, word of mouth, or the Internet.<sup>53</sup> These types of communication and the resulting swelling of the assembly, however, should not be interpreted as evidence of prior organization. Rather, where a lone demonstrator or small group is joined by others, the gathering should be treated as a spontaneous assembly and the police should *not* break it up.

Mr. Maina Kiai has also stated that in the case of a spontaneous assembly “should the organizers fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment.”<sup>54</sup> The Special Rapporteur and the OSCE/ODIHR Panel of Experts believe that the authorities should be flexible in cases of (a) late notification, if there is a good reason; (b) incorrect completion of form; or (c) failure to provide all necessary information. The notification timeline should not restart from the beginning and there should be some flexible means of correcting minor omissions or errors.” Therefore, the failure to provide notification due to the exigencies of spontaneous assembly should not become a punishable offense.

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<sup>51</sup> Guidance on Dispersal of Groups Antisocial Behaviour etc. (Scotland) Act 2004

<sup>52</sup> See the judgment of the Hungarian Constitutional Court, Decision 75/2008, (V.29) AB, which established that the right of assembly recognized in Article 62 para. (1) of the Hungarian Constitution covers both the holding of peaceful spontaneous events (where the assembly can only be held shortly after the triggering event) and assemblies held without prior organization. The Court stated that, “it is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event.”

<sup>53</sup> OSCE Guidelines.

<sup>54</sup> Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, A/HRC/20/27, para. 29, May 21, 2013.

The responsibility of the law enforcement and police is to employ the minimum required force to break up all assemblies, or, ideally, to negotiate a settlement to conclude the assembly, and to restrict the assembly only if participants commit illegal acts under international law. When participants hold a spontaneous assembly without permission in a country that imposes the permission requirement the police should not react to the assembly with force to break it up. Rather, the police should exercise discretion and only break up such as assembly after the participants have had a reasonable amount of time express their message.

In *Éva Molnár v. Hungary* (2008), for example, the ECHR ruled that eight hours was a reasonable period of time for the participants in a spontaneous assembly to make their protest at a public square without providing notification to authorities. The police decision to disperse the assembly after such a time period was not unreasonable.<sup>55</sup> To increase the likelihood that law enforcement and police use appropriate force and at the appropriate time, it is a best practice to draft national laws with as much or more protection as international law.

The ECHR has clarified that spontaneous assemblies constitute a “special circumstance” for which the right to hold a spontaneous assembly “may override the obligation to give prior notification.”<sup>56</sup> 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.”<sup>57</sup>

Even where no such exemption for spontaneous assemblies exists in a country’s law, the authorities should still protect and facilitate any spontaneous assembly so long as it is peaceful in nature. The ECHR has stated in *Bukta and Other v. Hungary* 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’.”<sup>58</sup>

There are some countries that as per good practice explicitly allow for spontaneous assemblies. For example:

- **Yemen’s** Law on the Organization of Marches and Assemblies states that “The provisions of this law do not apply to protests and sit-ins that do not turn into a demonstration or a march.” This Article provides some space for spontaneous gatherings on a smaller scale, such as those that do not amount to “demonstration” or “march.”

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<sup>55</sup> Molnár v. Hungary (Application no. 10346/05, judgment of 7 October 2008).

<sup>56</sup> See Bukta and Others v. Hungary (2007), para.32; and Éva Molnár v. Hungary (2008), para. 38.

<sup>57</sup> Ibid.

<sup>58</sup> See Bukta and Others v. Hungary (2007), para.36; Nathan W. Kellum, “Permit Schemes”, op. cit., note 175, p. 425, concluding that “Individuals and small group gatherings should never be subjected to such tedious requirements”.

## VI. Conclusion

This article discussed the legality of the permission requirement and best practices of the notification procedure for assemblies. It showed that the notification procedure is preferred because it conforms with international law and the 'principle of presumption' in favor of holding assemblies. The article also showed that although a notification procedure likely meets that limited circumstances for which the government may restrict the freedom of assembly, there should be no punishment for organizers or participants of spontaneous assemblies. Furthermore, it is the responsibility of law enforcement and police to facilitate peaceful assemblies and not break them up until the participants have had a sufficient opportunity to express their message publicly even when notification is not provided.

These principles will assist governments, police and organizers and participants to know their rights and best practices during assemblies. The increasing frequency of assemblies around the world, especially spontaneous ones, makes it urgent for this knowledge to be disseminated. Ultimately, this will ensure that the Freedom of Assembly is enjoyed by citizens and is respected by their governments, and countries will be better off when this right thrives.