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**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 extrajudicial, summary or arbitrary executions, Christof Heyns\*\***

#### *Summary*

The present report provides an overview of the activities of the mandate over the past year. It also discusses the legal norms applicable to the use of lethal force during demonstrations. Based on a study covering a sample of 76 countries, the Special Rapporteur concludes that many domestic legal systems do not adhere to international standards in respect of the right to freedom of assembly, and the use of force during demonstrations. The Special Rapporteur proposes some entry points and strategies to ensure greater compliance with international standards.

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\*\* Late submission.

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## **I. Introduction**

1. Christof Heyns took up his functions as Special Rapporteur on extrajudicial, summary or arbitrary executions on 1 August 2010. This is his first annual report to the Human Rights Council. In the report, the Special Rapporteur gives an overview of the activities of the mandate over the past year, and in the thematic part, focuses on the preservation of life in the context of demonstrations.

2. The Special Rapporteur wishes to acknowledge the path-breaking work of his predecessors since 1982 in establishing the mandate, particularly his immediate predecessor, Philip Alston, for the courage and intellectual rigour that he brought to the post. The Special Rapporteur further expresses his commitment to be faithful to the best traditions that they have established, including the tradition of developing the mandate in an innovative manner in order to secure the right to life.

## **II. Activities of the Special Rapporteur**

### **A. Communications**

3. The present report covers communications sent by the Special Rapporteur between 16 March 2010 and 15 March 2011, and replies received between 1 May 2010 and 30 April 2011. The details of the communications, responses from Governments and observations of the Special Rapporteur are reflected in addendum 1 to this report (A/HRC/17/28/Add.1). During the period under review, the Special Rapporteur sent 123 communications to 54 countries and 3 actors (including 54 urgent appeals and 66 allegation letters). The main issues covered in the communications were the death penalty (23), deaths in custody (9), death penalty for minors (4), excessive use of force (29), impunity (3), attacks or killings (31), armed conflict (4), death threats (7) and other (13). The status of individuals who were the subject of concern with regard to application of the death penalty is contained in the annex attached hereto.

### **B. Visits**

4. The Special Rapporteur visited Zambia in March 2011 to conduct on-site research on the control of demonstrations, while the Government of Mexico has invited the Special Rapporteur to carry out an official mission to the country from 22 November to 2 December 2011.

5. In 2010, the Special Rapporteur sent requests for country visits to Eritrea, Thailand, Turkey, Iran, Sri Lanka and Canada.

6. The previous mandate holder, Philip Alston, undertook visits to Albania from 15 to 23 February 2010, (see A/HRC/17/28/Add.3 for mission report), and Ecuador from 5 to 15 July 2010 (see A/HRC/17/28/Add.2 for mission report). Follow-up reports on missions undertaken by the previous mandate holder to Kenya, the United States of America and Afghanistan are contained in documents A/HRC/17/28/Add.4, A/HRC/17/28/Add.5 and A/HRC/17/28/Add.6 respectively.

### **C. Press releases<sup>1</sup>**

7. On 31 December 2010, the Special Rapporteur issued a joint press statement concerning allegations of enforced or involuntary disappearances, arbitrary detentions, extrajudicial executions, and acts of sexual violence following the presidential elections in Côte d'Ivoire. Another joint statement was released on 1 April 2011, expressing support for Security Council resolution 1975 (2011) condemning these violations.

8. A number of joint press statements concerning excessive use of force against, and the killing and/or injuring of, protestors have been released, including on 22 March 2011 concerning Bahrain; 18 March 2011 regarding Yemen; 22 February 2011 on violations in Libya; 18 February 2011 violations in Bahrain and Libya; and 14 January 2010 concerning Tunisia. On 3 February 2011, a joint press statement was released expressing concern at the general violations of rights and excessive use of force against protestors, with specific mention of Belarus, Egypt and Tunisia.

9. The Special Rapporteur addressed the killings of individuals in joint press releases, including on 2 March 2011 concerning Pakistani Minister for Minority Affairs, Shahbaz Bhatti; and 9 June 2010 concerning human rights defender, Floribert Chebeya Bahizire, in the Democratic Republic of the Congo. In a joint press release dated 2 February 2011, the Special Rapporteurs expressed concern at the increased carrying out of death sentences in Iran, and called for a moratorium on the death penalty in that country.

### **D. International and national meetings**

10. The Special Rapporteur participated in a seminar on targeted killing organized by the International Commission of Jurists in Geneva, in September 2010. He gave presentations on the work of the mandate at the Universities of the Witwatersrand and Pretoria during March 2011.

### **E. Sri Lanka video**

11. The Special Rapporteur conducted a technical assessment to establish the authenticity of a video allegedly showing the execution of Tamil prisoners by Sri Lankan troops during the civil war. The urgent appeal sent to the Government on the case and forensic reports of the assessment are reproduced in (A/HRC/17/28/Add.1).

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<sup>1</sup> Press releases of the Special Rapporteur on extrajudicial, summary or arbitrary executions available at [http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR\\_Summ\\_Executions](http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Summ_Executions).

### III. Protecting the right to life in the context of policing assemblies<sup>2</sup>

#### A. Background and rationale

12. Recent events in the Arab world, and in other countries, have again illustrated how easily protests and demonstrations could end in large-scale bloodshed and tragedy.<sup>3</sup> In many instances this occurs where the police do not apply human rights standards. However, this should not be seen, first and foremost, as a problem regarding out-dated policies about the use of lethal force. The broader issue is how to deal with dissent. This illusive problem has plagued humanity throughout history: how should those in power handle contestation? The standards applicable to the use of force cannot be dealt with in isolation. An equally important question is how demonstrations and peaceful assemblies should be managed.

13. If peaceful public protests are managed in such a way that they are less likely to escalate into violent confrontation, the need to decide whether or not to react forcefully will arise less frequently. Ensuring better compliance, at the domestic level, with international standards regarding assembly rights will go a long way towards securing the right to life.

14. Some of the key historical changes during the last century, and earlier, have been brought about by the masses taking to the streets. The human rights movement, itself, owes much of its development to such protests. Most recently, unprecedented and, at least, initially peaceful mass demonstrations changed the political landscape in Tunisia and Egypt, then spread to Bahrain, Libya, the Syrian Arab Republic, Yemen and other countries.

15. Some of these public demonstrations have dominated the headlines, while many less visible ones have taken, and are taking, place. In some instances, the demonstrations remain peaceful and non-violent, in others, the conflict escalates; in some cases those who are injured or killed are counted in the hundreds. Reports from NGOs and other watchdogs worldwide indicate that worrying numbers of people are killed or maimed in demonstrations; some commentators claim that aggressive policing is on the increase. There are multiple instances where public protest is not considered an option due to fear of the consequences.

16. Obviously, not all protests can be allowed to proceed unrestricted. For one thing, the merits of protest action are not always clear-cut. Indeed, a host of unresolved social issues cause people on all sides to express themselves by joining public gatherings, processions, and sometimes counter demonstrations. Moreover, even where the underlying causes of a

<sup>2</sup> The following persons commented on earlier drafts and assisted with research: Romi Brammer, Gus Waschefort, Neil Jarman, Erika de Wet and Rufaro Mavunga. Many people assisted with gathering material, in particular on the legal provisions in the individual countries, including human rights Master's students at the Universities of Pretoria and Oxford, and the Cambridge Pro Bono Project. See <http://www2.ohchr.org/english/issues/executions/index.htm> for details. On-site discussions with police officers and others involved in policing protests were held in South Africa and Zambia, in addition to long-distance communications with people in a number of other countries, including India and Northern Ireland. This report forms part of a broader, ongoing study that will be covered on the same website.

<sup>3</sup> The terms "demonstration," "assembly," "gathering," and "public protest" are used interchangeably in this report to refer to the temporary presence of a number of people in a public space, with the objective of making a collective, mostly political, statement. The mobile version is referred to as a "procession."

particular protest action are clearly meritorious, the State has a residual obligation to maintain public order.

17. Public protest has a potential spill-over effect and can compromise legitimate State and social interests. Protest can result in social disruption, damage to property, injury and loss of life.

18. A relatively clear and coherent set of international human rights law standards has been developed in respect of the use of lethal force by law enforcement officials in general, including during demonstrations. However, as will be shown later in this report, vastly diverging standards are applied in respect of the use of lethal force domestically, and many do not meet international standards.

19. The need to take stock of the law of protest gains additional urgency from the cumulative effect of a number of contemporary developments that point to a probable increase in the incidence and intensity of public demonstrations in the future. This includes: (a) more pressure on scarce resources, leading to increased competition, especially in societies where large parts of the population are already at risk due to poverty; (b) the expanding role of information and communication technology, often beyond direct State or community control, with far-reaching effects on the quick mobilization of crowds, including in societies where communication has traditionally been restricted; (c) rapid urbanization, primarily in the developing world, with political protest taking place mostly in cities and towns; (d) strong global population growth, at least over the next few decades, causing, in particular, an increase in the number of young people in developing countries, the most energetic participants in political protest; and (e) the global expansion of ideas of democracy and human rights, which have in their own right become a catalyst for activism, including in countries where there would have been hesitance in the past, and where the path to reform is the longest.

20. The last point requires elaboration. The recent events in the Arab world have lowered fear barriers around the world, and will have an influence for many years to come. Moreover, demonstrations often coincide with elections, which have increasingly turned violent in recent years.<sup>4</sup>

21. The abovementioned considerations suggest that there will be pressure, in particular on developing countries and countries without established traditions of democracy and human rights, to manage demonstrations.

22. In view of the foregoing, it would be appropriate to determine to what extent the legal and policy frameworks in place, in respect of mass gatherings, are suitable for dealing with current and future challenges. It is a well-established fact that the handling of crowd situations needs to be planned well in advance, for once control of the situation lapses, it is difficult to turn it around.

23. Most of the available studies of demonstrations focus on the right to peaceful assembly in societies where there are, by and large, sufficient resources available, and where a general commitment to human rights prevails. This is not, however, the kind of situation in which most lives are lost. This report casts the net wider, and deals with the right to life during peaceful and legal demonstrations, as well as with situations where such protests have turned violent or illegal in settings around the world.

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<sup>4</sup> A/HRC/14/24/Add.7, paras. 49-62.

## B. The mandate of the Special Rapporteur in protecting the right to life in the context of assemblies

24. The mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions centres on the right to life. In its resolution 1996/74, the Commission on Human Rights requested the Special Rapporteur, in carrying out his mandate, to, *inter alia*, “continue to pay special attention [...] to allegations concerning violations of the right to life in the context of violence against participants in demonstrations and other peaceful public manifestations” (para. 7(d)).

25. An important part of the motivation for the establishment of the mandate was to curb instances where State power is used to eliminate political opponents. One way in which this occurs is the use of excessive force by law enforcement officers, prompted by the belief that it is expected of them, in curbing political demonstrations. However, the mandate is also invoked when lives are placed in danger during such situations, for any other reason.

26. In 2007, the Special Representative of the Secretary-General on human rights defenders submitted a comprehensive report on the right to protest from the perspective of human rights defenders.<sup>5</sup> In his 2009 Report to the Human Rights Council, the Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that a study on the use of deadly force during demonstrations would be undertaken by the mandate.<sup>6</sup>

27. The Special Rapporteur has frequently addressed arbitrary deprivation of life in the context of policing assemblies. During the period under review approximately 10 per cent of the communications sent by the mandate holder to States dealt with this topic.

## C. Applicable international legal standards

28. The norms regarding the rights and duties in policing protests are to be found in international law (on both the global and regional level), and also in domestic law.<sup>7</sup>

29. While international law primarily makes a distinction in terms of the level of protection provided in peaceful and violent demonstrations, domestic law often draws the line between lawful and unlawful gatherings. This suggests that the pre-occupation of international law is to ensure peace, while national law has a stronger focus on law enforcement.

30. International standards are often stated in general and aspirational terms, and are not necessarily applicable word-for-word at the domestic level, where greater detail and precision are required.

### Freedom of assembly

31. Assembly plays a facilitating role in respect of other rights. In many instances, public protest has been the vehicle through which a wide range of human rights have gained entry into the global human rights project. Protest is a tool primarily used by opposition and minority groups.

32. If freedom of assembly is to play its role as a mechanism that provides a platform to those who would otherwise not be able to make their point, it follows that it should not be

<sup>5</sup> A/62/225; see also A/61/312.

<sup>6</sup> A/HRC/11/2, paras. 64–65.

<sup>7</sup> See Ralph Crawshaw et al., *Human rights and policing*, 2nd rev. ed. (Leiden, Martinus Nijhoff, 2007).

regulated in a way that is biased in favour of those who happen to be in power. The regulation of freedom of assembly should be content-neutral (except where human rights objectives are undermined, for example, through the promotion of violence or racial hatred). If either the legal provisions in respect of assembly or the way in which these laws are administered are skewed against those who are supposed to be its direct beneficiaries, then they will be in a worse position than if the right was not recognized at all.

33. Supporting freedom of assembly implies a realization that, as expressed so eloquently by the Spanish Constitutional Court, “in a democratic society, the urban space is not only an area for circulation, but also for participation”.<sup>8</sup>

34. Freedom of assembly is widely recognized and protected in international instruments. Article 20(1) of the Universal Declaration of Human Rights (UDHR) states that “everyone has the right to freedom of peaceful assembly....” According to article 21 of the International Covenant on Civil and Political Rights (ICCPR), the “right of peaceful assembly shall be recognized.” It further states that “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.” As such, limitations to this right – prohibition or restriction of assembly by local authorities and the police – may be imposed only if the above provisions are met.<sup>9</sup>

35. At the regional level, the African Charter on Human and Peoples’ Rights (African Charter) recognizes that “every individual shall have the right to assemble freely with others” (art. 11), without explicitly requiring that the assembly be “peaceful”. The American Convention on Human Rights (American Convention) recognizes the right of “peaceful assembly, without arms” (art. 15) while article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), and the article 24.6 of the Arab Charter on Human Rights (Arab Charter) recognize the right to “peaceful assembly”.

36. In phrasing similar to that of the International Covenant on Civil and Political Rights, the regional instruments stipulate that any restrictions on this right must be in conformity with the law and necessary “in a democratic society” (European and African instruments) or in a society that “respects freedom and human rights” (Arab Charter) in the interest of national security, public safety, public order, protection of health and morals, or “ethics” (African Charter), or protection of the rights of others. Legal provisions that circumscribe the terms under which limitations may be imposed should not be so open-ended as to give the State carte blanche.<sup>10</sup>

37. Limitations placed on those wishing to exercise their assembly rights should be proportionate and necessary, and be subject to appeal in an independent court of law. The positive obligation on the State to facilitate peaceful protest has been recognized in several international cases.<sup>11</sup>

<sup>8</sup> Judgment 66/1995, leaf 3.

<sup>9</sup> For discussion, see Manfred Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary*, 2nd rev. ed. (Kehl am Rhein, Engel, 2005), p. 491; also Siracusa Principles (E/CN.4/1984/4), annex. Very few reservations have been entered against article 21.

<sup>10</sup> See *Amnesty International and Others v Sudan* (2000) AHRLR 297 (ACHPR 1999).

<sup>11</sup> See, for example, *Plattform Ärzte für das Leben v. Austria*, ECHR 10126/82 (21 June 1988).

38. According to a number of international instruments, human rights may not be used in a way that is aimed at the destruction of other rights.<sup>12</sup> These provisions form a legal basis for the small number of non-content-neutral restrictions on demonstrations that are permissible, such as the promotion of violence.

39. According to the Human Rights Committee, a notification requirement in respect of planned demonstrations is not necessarily an infringement of the right to freedom of peaceful assembly,<sup>13</sup> and the same probably applies to a permit requirement system, provided there is the assumption such a permit will be issued.

40. Spontaneous demonstrations occur where there is no opportunity for prior notice or to apply for a permit. If there is indeed no such opportunity, the assembly should be regarded as legal and should therefore be protected.<sup>14</sup>

41. Derogation from the right to freedom of assembly is possible under article 4 of the International Covenant on Civil and Political Rights during a state of emergency.<sup>15</sup>

42. Only “peaceful assembly” is protected by this provision. However, the individual does not lose the protection of the right when sporadic or isolated violence occurs in the crowd.<sup>16</sup>

### **Right to life**

43. During demonstrations, the right to life of protesters, the police and the public may be at stake. The right to life, sometimes described as the “supreme human right,” constitutes a rule of customary international law and is one of the central rights recognized in international human rights treaties. The primary purpose of the recognition of the right to life is to protect people from being killed by the State, the entity that claims and, to a large extent, exercises monopoly on the use of force.<sup>17</sup>

44. Article 3 of the Universal Declaration of Human Rights states that “everyone has the right to life, liberty and security of person,” while article 6.1 of the International Covenant on Civil and Political Rights states that “every human being has the inherent right to life, [which] shall be protected by law, and [that] no one shall be arbitrarily deprived of his life.”<sup>18</sup> The word “inherent” underscores the fundamental importance of this right, while “protected by law” implies not only protection by the State from infringement by other members of society, but also respect by agents of the State. It should be noted that “arbitrary” deprivation of life is covered by the right; non-arbitrary deprivation of life falls outside its protection.

45. According to general comment No. 6 of the Human Rights Committee on the right to life (para. 3), States parties should take measures to, *inter alia*, “prevent arbitrary killings by their own security forces. The deprivation of life by the authorities of the State is a

<sup>12</sup> See, for example, UDHR, art. 30; ICCPR, art. 5; European Convention, art. 17; African Charter, art. 27.2 which states that everyone has the duty to exercise their rights with due regard to the rights of others.

<sup>13</sup> See *Auli Kivenmaa v. Finland*, No. 412/1990 (CCPR/C/50/D/412/1990).

<sup>14</sup> See *Bukta and Others v. Hungary*, ECHR 25691/04 (17 July 2007), para. 32.

<sup>15</sup> American Convention, art. 27 and European Convention, art. 15 also provide for derogation from freedom of peaceful assembly.

<sup>16</sup> See *Zilberberg v. Moldova*, ECHR 61821/00 (4 May 2004), and *Ezelin v. France*, ECHR 11800/85 (26 April 1991).

<sup>17</sup> See Ralph Crawshaw and Leif Holmström, *Essential cases on human rights for the police* (Leiden, Martinus Nijhoff, 2006), p. 39.

<sup>18</sup> See also UDHR, art. 3.

matter of utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.”

46. At the regional level, the African, Inter-American and Arab instruments, recognize protection against “arbitrary” deprivation of life,<sup>19</sup> while the European Convention is based on “intention.” Article 2.1 of the European Convention states that “everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

47. With regard to deprivation of life, article 2.2 of the European Convention states as follows:

Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a. in defence of any person from unlawful violence;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. in action lawfully taken for the purpose of quelling a riot or insurrection.

48. The test for the use of force in the European system, including when dispersing a riot, is whether it is “absolutely necessary.”<sup>20</sup> The use of force must be both proportionate and necessary.

49. While “proportionality” requires that the benefits attached to the objective pursued should outweigh the damage that would be caused through the violence, “necessity” demands that the lowest possible level of force necessary to achieve a legitimate objective should be used.<sup>21</sup>

50. Article 2.2 of the European Convention therefore provides for three contexts in which deprivation of life caused by use of force does not engage State responsibility: self-defence, arrest or riots. These contexts probably constitute the sum total of instances in which killing would be considered non-arbitrary under the International Covenant on Civil and Political Rights.<sup>22</sup>

51. The right to life, as defined in the International Covenant on Civil and Political Rights, is not subject to the internal limitation clauses that can be evoked in respect of many other rights. However, it is not an absolute right because non-arbitrary deprivation of life is regarded as acceptable.

52. No derogation from the right to life is permissible under the International Covenant.<sup>23</sup>

<sup>19</sup> African Charter, art. 4; American Convention, art. 4; Arab Charter, art. 5.

<sup>20</sup> See *McCann and Others v. United Kingdom*, ECHR 1898/91 (27 September 1995).

<sup>21</sup> See A/61/311, paras. 40-45; also *Suárez de Guerrero v. Colombia*, No. R.11/45 (A/37/40); *Jiménez Vaca v. Colombia*, No. 859/1999 (CCPR/C/74/D/859/1999); *Güll v. Turkey*, ECHR 2267/931 (4 December 2000); *Zambrano-Vélez and others v. Ecuador* I/A Court H.R. Series C No.166 (2007); *Neira Alegria v. Peru* I/A Court H.R. Series C No. 20 (1995); contrast *Kelly v. United Kingdom* [1993] ECHR 17579/90 (13 January 1993).

<sup>22</sup> See Nowak, *UN Covenant on Civil and Political Rights* (see para. 34, fn. 9), p. 128.

<sup>23</sup> ICCPR, art. 4; see also American Convention, art. 27; European Convention, art. 15; Arab Charter, art. 4(2).

*Provisions regulating the use of force*

53. An elaboration of the norms applicable to the use of force by law enforcement officials – in any kind of situation – can be found in a number of soft law instruments, which also define contexts in which deprivation of life during demonstrations would be regarded as “arbitrary” in terms of article 6 of the International Covenant on Civil and Political Rights.<sup>24</sup>

54. The Code of Conduct for Law Enforcement Officials<sup>25</sup> (Code) sets the standards, supplemented by commentaries, by which law enforcement officials should execute their duties. Article 2 of the Code requires law enforcement officials to respect and protect the human rights of all persons, including the right to freedom of peaceful assembly. The Code provides for the use of force “only when strictly necessary and to the extent required for the performance of their duty” (art. 3).

55. Commentary (c) on article 3 states that:

the use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.

56. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>26</sup> (Basic Principles) state in principle 9 that:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

57. Principle 12 under the heading Policing unlawful assemblies, recognizes the right to participate in lawful, peaceful assemblies, and cautions States that force and firearms may be used only under certain circumstances.<sup>27</sup>

58. Principle 13 provides for the dispersal of assemblies that are “unlawful but non-violent,” and states that “law enforcement officials shall avoid the use of force or, where that is not practicable, restrict such force to the minimum extent necessary.”

59. With regard to “violent assemblies,” principle 14 provides for the use of firearms “only when less dangerous means are not practicable and only to the minimum extent necessary” and under the conditions stipulated in principle 9 (see para. 56 above).

60. The guiding principle in respect of the lethal use of force or firearms is defence of one’s own life or that of others. The only circumstances warranting the use of firearms,

<sup>24</sup> For a discussion, see Crawshaw et al., *Human rights and policing* (see para. 28, fn. 7); also Nigel Rodley, *The treatment of prisoners under international law* (Oxford, OUP, 2009), p. 495.

<sup>25</sup> Adopted by the General Assembly in its resolution 34/169 (1979).

<sup>26</sup> Adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cuba, 1990.

<sup>27</sup> See also Standard 5 of Amnesty International, *Basic human rights standards for law enforcement officials*, AI Index POL 30/04/98 of 1998; see *Giuliani Gaggio v. Italy* App. No. 23458/02, decision of 24 March 2011.

including during demonstrations, is the imminent threat of death or serious injury, and such use shall be subject to the requirements of necessity and proportionality.

61. In principle shooting indiscriminately into a crowd is not allowed and may only be targeted at the person or persons constituting the threat of death or serious injury.<sup>28</sup> The use of firearms cannot be justified merely because a particular gathering is illegal and has to be dispersed, or to protect property. This is often not reflected in domestic laws.

62. In terms of the Code and the Basic Principles, the norm in respect of the intentional use of lethal force is the same under all circumstances, whether in self-defence, arrest, quelling a riot or any other circumstances, namely, protection of life.

63. Prevention of arbitrary killings is one component of securing the right to life; another is accountability, where killing has occurred.<sup>29</sup> The Code requires that a report be made promptly to the competent authorities, in every instance in which a firearm is discharged.<sup>30</sup> Disciplinary action should be taken where applicable.

64. While these soft law instruments have brought a considerable measure of coherence in respect of the international norms, the Basic Principles have been criticised for lacking clarity as to whether firearms may be used against people other than those presenting the threat of danger. Some of the principles are also redundant.<sup>31</sup> It has been pointed out that the Basic Principles do not define concepts such as “force” or “firearms”, and pose general standards, as opposed to concrete action guidelines.<sup>32</sup>

65. Under the European Code of Police Ethics,<sup>33</sup> the use of force must meet the requirements of necessity and proportionality (para. 37).

#### **States of emergency and demonstrations**

66. While the foregoing concern “ordinary” limitations to the right to peaceful assembly, there are also circumstances in which “extraordinary” limitations may be imposed on this and other rights, for example, through the declaration of a state of emergency, in accordance with article 4 of the International Covenant on Civil and Political Rights. The right to freedom of peaceful assembly is often included in the list of rights that are suspended during states of emergency.

67. As is the case with all limitations, there is the risk that states of emergency could be misused by States seeking to suppress human rights. A number of the States in which recent demonstrations served to change the public order had already had states of emergency in place for decades.

68. While human rights law recognises that there are conditions under which states of emergencies may be declared, and certain rights can legitimately be suspended while

<sup>28</sup> See discussion in Crawshaw et al., *Human rights and policing* (see para. 28, fn. 7), p. 150, on the difficult question as to whether lethal force may be used in protection of life against an individual who does not necessarily pose an imminent threat, but who is part of a group that does.

<sup>29</sup> See *Solomou and Others v. Turkey*, ECHR 368327/97 (24 September 2008).

<sup>30</sup> Commentary on article 3.

<sup>31</sup> See Crawshaw et al., *Human rights and policing* (see para. 28, fn. 7), p. 154.

<sup>32</sup> Anneke Osse, *Understanding policing* (Netherlands, Amnesty International, 2006), p. 129, available at [www.amnesty.nl](http://www.amnesty.nl).

<sup>33</sup> Rec (2001) 10 adopted by the Committee of Ministers of the Council of Europe, 19 September 2001.

emergency powers are in place, a specific regime of safeguards aimed at curtailing abuse must be met by States wishing to invoke emergency powers.<sup>34</sup>

69. There is a presumption against allowing derogation from freedom of assembly in response to mass demonstrations, even where there are instances of violence. States have to submit strong evidence to rebut this presumption.

70. However, while freedom of peaceful assembly may legitimately be curtailed during states of emergency, the other non-derogable rights of the demonstrators, such as the right to life, remain in place and have to be respected.<sup>35</sup>

#### **International humanitarian law**

71. During armed conflict, international human rights law, to the extent that specific rights have not been suspended, and subject to the dictates of international humanitarian law, remains applicable as *lex generalis*.<sup>36</sup> Unlawful killing is prohibited under international humanitarian law, including in the case of non-international armed conflict, according to common article 3 of the Geneva Conventions of 1949.<sup>37</sup>

#### **International criminal law**

72. Unlawful killing during peace and war times may constitute an international crime under the Rome Statute of the International Criminal Court, and would also apply to those participating in demonstrations, as is evidenced by the recent referral to the International Criminal Court of the situation in the Libyan Arab Jamahiriya, where peaceful protesters were killed by Government troops.<sup>38</sup>

73. More than a thousand people lost their lives during election-related violence in Kenya, in respect of which prosecution is now under way in the International Criminal Court. The situations in Honduras, Guinea and Côte d'Ivoire are also being investigated.

#### **The role of United Nations peacekeepers in handling protest**

74. United Nations peacekeeping troops sometimes encounter situations where they are faced with protesters. It is important that the peacekeeping troops comply with international standards in managing such situations.

<sup>34</sup> For example, a state of emergency can only be declared, and remain in force in terms of article 4 of the ICCPR, where the emergency “threatens the life of the nation;” it cannot be used to save a specific Government.

<sup>35</sup> This is contrary to Nowak, *UN Covenant on Civil and Political Rights* (see para. 34, fn. 9), p. 487, who states that during violent protests, participants lose their human rights protection.

<sup>36</sup> See International Court of Justice, “Legality of the Threat or Use of Nuclear Weapons,” Advisory Opinion of 8 July 1996, para 25.

<sup>37</sup> See discussion in Rodley, *The treatment of prisoners under international law* (see para. 53, fn. 31), p. 260.

<sup>38</sup> Security Council resolution 1970 (2011) referred the situation in the Libyan Arab Jamahiriya to the International Criminal Court because of the “gross and systematic violation of human rights, including the repression of peaceful demonstrators”; on 23 February 2011, the Peace and Security Council of the African Union, in a communiqué issued at the 261st meeting, “express[ed] deep concern with the situation in [Libya] and strongly condemn[ed] the indiscriminate use of force and lethal weapons against peaceful protesters”; the African Court on Human and Peoples’ Rights ordered provisional measures against Libya on the same grounds, see *African Commission on Human and Peoples’ Rights v. Great Socialist People’s Libyan Arab Jamahiriya*, App. No. 004/2011, dated 25 March 2011.

## **D. Domestic application of international norms in protecting the right to life when policing assemblies**

75. There is no quick, single answer to the question of how to handle public protest. Differences in the type and size of crowds, causes and social settings pose a diverse range of challenges. Societies vary in terms of their propensity to violence, and approach to solving disputes. The need to strike a balance between the legitimate interests of protesters and the broader society in the unique context of each situation makes a one-size-fits-all approach to protest impossible and undesirable.

76. Nevertheless, much is to be gained from studying the way in which different national legal regimes regulate protest, and looking at good and bad practices around the world.

77. As to whether assembly and protest rights are adequately secured in practice depends on how much political room there is for dissent in the country in question. Are the laws applied in an even-handed manner, if at all?<sup>39</sup> While noting the often overriding prominence of political and practical considerations, this report focuses primarily on protection by law.

78. In some legal systems, the applicable laws predate the establishment of the United Nations and have remained unchanged for decades. The laws on demonstrations in Egypt, for example, date from 1914 and 1923, and in two other countries studied for this report, from 1857 and 1897 respectively.

79. The legislation of some 76 countries (to the extent that it was publicly available) was considered for the purpose of this report. Difficulties were experienced in obtaining a comprehensive picture in respect of some countries; for example, in the case of federal States, in situations where a number of different laws deal with the use of force, and where not all laws are written. Nevertheless, an indication of the kind of provisions that are in place at the domestic level were be garnered from this sample.

80. The constitutions of most countries recognise the right to life and peaceful assembly. However, the constitutions of Bahrain, Brunei, China, Comoros, Cuba, Egypt, Democratic Peoples' Republic of Korea, Kuwait, Laos, Lebanon, Mexico, Morocco, Oman, Panama, Saudi Arabia, Syrian Arab Republic, United Arab Emirates and Yemen do not expressly recognise the right to life, and the constitutions of Brunei, Djibouti, Gabon, Qatar and Yemen do not recognise the right to freedom of peaceful assembly.

81. Certain rights may be suspended during states of emergency under national constitutions. While the right to life may not be suspended under international law, the right to freedom of peaceful assembly may be suspended, and most, but not all, constitutions also provide for derogation from this right.

82. Around one third of the 76 countries considered have specialised legislation in place on demonstrations. In other countries, demonstrations are regulated together with other public order issues or in the countries' penal codes. Some countries recognise a positive duty to facilitate demonstrations. In two countries studied, it is a criminal offence for a police officer not to disperse an illegal gathering.

83. Domestic legal systems can be used in many ways to suppress political freedom and dissidents, and at the same time, minimise the room available for assembly, often not explicitly. This can be done through security laws (including anti-terrorism laws), but also

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<sup>39</sup> One issues of relevance here is police oversight mechanisms; see, in this regard, A/HRC/14/24/Add. 8, paras. 8-14.

by means of vague and open-ended crimes such *peligrosidad* (dangerousness) and *moharebeh* (enmity against God). In some instances, organisations engaged in protest are banned in violation of the right to freedom of association.

84. Many countries follow international standards in respect of limitations on demonstrations, through laws targeting legitimate objectives such as national security, public order, and protection of the rights of others. In a number of countries, assemblies promoting hate speech and the use of violence are prohibited.

85. However, in a troubling number of instances, the police are given explicit, unfettered discretion to prohibit demonstrations. The relevant laws define reasons why this could be done, but the terms used are vague and open-ended, allowing for almost any restriction. For example, in one country, demonstrators are not allowed to “publish rumours and baseless propaganda that would create shock and horror in society,” while in another country, citizens cannot hold gatherings that “further the economic, political and social objectives of other countries or their citizens”.

86. Procedures for recourse to an independent court exist in a number of countries for those who feel aggrieved by limitations on planned protest actions, but not in the majority. Courts, including a significant number in Africa, have found open-ended or overly broad powers of functionaries to prohibit demonstrations to be unconstitutional.

87. In some countries, non-citizens are prohibited from participating in demonstrations.

#### **Notification and permits**

88. No notification or permission to hold demonstrations is required in some countries. However, in most countries, notification of planned gatherings must either be given or permits obtained, although it is often not clear that there is an assumption that permits will be granted.

#### **Restrictions on place, time and manner**

89. The State has wide discretion to impose content-neutral restrictions on demonstrations in order to minimise any disruptive effect, keeping in mind the importance of assemblies being held within “sight and sound” of the target audience.

90. In almost all the countries studied, there are restrictions on protests in the immediate vicinity of courts and parliament. Other places where protests are or may be prohibited include the area around the President’s residence, hotels where State guests are staying, and railway stations.

#### **Use of lethal force by police**

91. The majority of countries studied have one set of rules regarding the use of force by police in the given country that are applicable across board – for defence, arrest and demonstration dispersal.

92. In a smaller, but still significant number of countries, there is a special regime applicable specifically to use of force during protest gatherings. In most of these countries, the police have greater powers to use lethal force during demonstrations than otherwise. The legal regimes applicable in these countries will be considered first.

93. The test in countries with a special regime applicable during protest action is mostly whether the use of force is “reasonable” or “necessary,” without further limitations. It is a matter of concern that such provisions could be interpreted to constitute a subjective test, leaving it to the discretion of individual police officers to decide whether to shoot to kill. This can be taken as a licence to kill.

94. In some cases, the police are authorised to erect barriers and “may use such force as deemed necessary, including the use of lethal weapons, to prevent someone from crossing the barrier”.

95. Where such special use-of-force regimes apply, the police are in effect given the power to declare their own “mini states of emergency” in respect of the demonstration in question, without any of the safeguards that normally apply to such a declaration. Moreover, in such cases, the non-derogable right to life is, for all practical purposes, suspended.

96. In the majority of countries surveyed, the rules that regulate the use of force during demonstrations are the same as those that apply to any use of force by the police. While this is generally a healthier approach to follow, it does not necessarily mean compliance with international standards in all cases. There are three sub-categories among these countries.

97. In the first instance, in a large number of countries the standards applicable to the general use of force by the police are vague and loosely defined, and do not provide clear guidance. The following is a typical provision: “Any police officer may use such force as, in the circumstances of the case, may be reasonably necessary.”

98. The problem with such a provision when it sets a general standard for the use of force is the same as where it is encountered in specific regimes for demonstrations, as discussed above. While the standards often sound laudable in the abstract (and may, in practice, copy the wording of part of the international standards), because there is no further circumscription, they are imprecise enough as to be stretched to justify excessive use of force.

99. Where the term “necessary force” is used in such a context, the meaning is often more aligned with the permissive implications of the international law term “all necessary means,” than with the restrictive interpretation appropriate in cases where rights are limited to ensure that only the minimum force required is used. Where this is the case, law enforcement officers can, in effect, also create their own “mini states of emergency” in respect of demonstrations.

100. In the second instance, there are countries where the norms regarding the general use of force are clearly in violation of international standards. In one country, firearms may be used for a variety of reasons by the Internal Security Forces, including “at the behest of the administrative authority” and “to defend their positions.”

101. In the third instance, there are countries that comply, or substantially comply, with the international standards.

102. In some, but not all, countries, there is an automatic system of enquiry as to whether firearms should be used during demonstrations.

103. It may be concluded from the foregoing overview that domestic legal dispensations in respect of the deadly use of force during demonstrations in a significant percentage of countries do not comply with international standards.

#### **Equipment, logistics and training**

104. Countries also face practical challenges in dealing with demonstrations. In one country, a former policeman who was interviewed drew attention to the lack of equipment, such as less-than-lethal weapons: “If policemen are carrying live rounds, and that is all they have, they are going to use it sooner or later when they face hostile crowds.” A number of people interviewed stressed the fact that police who do not have the necessary protective gear will, understandably, resort more easily to the use of lethal force or firearms to defend themselves. An interviewee with practical experience in Northern Ireland commented on

the drastic reduction in the use of force, after police officers had been issued body-length shields and fireproof overalls.

## **E. Socio-legal approaches to protecting the right to life in the context of assemblies: evolving understanding of crowd behaviour**

105. Psychologists, sociologists, criminologists and others, such as urban planners, have produced a constant flow of new knowledge on policing and crowd behaviour, which must be taken into account if the dynamics at work are to be properly understood. New technologies also become available continually, affecting the nature of public demonstrations and subsequent accountability.

106. Our understanding of the social and psychological forces at work during mass demonstrations has grown over the years.<sup>40</sup> Taking cognisance of this body of knowledge can provide an understanding of the phenomenon, and better inform decisions on the management of protest and the use of force.

107. When joining a group, individual identity is supplemented by social identity. While some of the greatest achievements of humankind have been attained by group power, membership in a group may also lead to de-individuation; anti-normative behaviour is released and “group” thinking occurs. Group membership can lead to feelings of reduced individual responsibility, diminished respect for authority, and a lack of fear of danger.

108. According to the “classical view,” crowds are best understood as irrational, monolithic units that are dangerous and prone to violence. Starting from this premise, a public-order policing style of “escalated force” was followed in most Western countries until the 1960s. Even minor forms of transgression were harshly dealt with in order to affirm a culture of law and order.

109. This approach gave way, in the mid- 1970s and 1980s, to a philosophy of “negotiated management.” Following debilitating clashes between demonstrators and police in the 1960s, those who had to do public-order policing came to the conclusion that it would be more productive, where possible, to work with crowds, rather than against them. Under this approach, the task of the police is to protect rights and to facilitate, rather than frustrate, demonstrations. Some community disruption by protesters is tolerated, and force is used only where violence occurs, and then only in moderation.

110. This milder approach represents a shift towards a more active use of communication, negotiation, cooperation, information gathering and emphasis on preventive police policies. The new approach regarded stereotypes associated with the classical understanding of crowd behaviour as wrong and potentially dangerous, because the police could misunderstand the situation and use excessive force, which could escalate the conflict.

111. Under the negotiated management approach, groups are different from individuals – the whole, indeed, does not equal the sum of the parts – but they do not necessarily act in a random, incomprehensible way. Groups react according to their own logic, to a number of external influences, including how they are treated by the authorities. In short, if a crowd is treated like an irrational group of criminals who only understand the language of force, that is how they will behave.

<sup>40</sup> See Donatella della Porta and Herbert Reiter, eds., *Policing Protest: The control of mass demonstrations in Western democracies* (Minneapolis, University of Minnesota Press, 1998), and David Waddington, *Policing Public Disorder: Theory and practice* (Devon, Willan Publishing, 2007).

112. Crowds are more prone to violence when they see police actions as heavy-handed, and consequently illegitimate. The indiscriminate use of force against a crowd as a whole can persuade the more restrained members of the group to also resort to the use of force in order to protect their fellow group members.

113. The negotiated management approach entails accepting some of the spill-over effect of the protest in return for assurances as to the peaceful nature of the event. The emphasis of this approach is therefore on ensuring peace, rather than enforcing law. In this paradigm of “under-enforcement” of the law, force should be used by the police in self-defence, rather than to assert the authority of the law in the abstract.

114. Police practices such as the following are among those encountered in this paradigm: facilitation of protestors’ access to roads, which they would otherwise not have, with the expectation of some measures of self-policing; involvement of women and men in the policing of protest; ensuring that individual members of the police are identifiable (e.g., names displayed on uniforms); and keeping riot police out of sight when they are not needed.

115. A number of countries that follow this approach have formalised the role of the “safety triangle” during demonstrations, that is, the organisers, local or State authorities, and the police, who are required to communicate with each other in order to avert safety risks and diffuse conflict.<sup>41</sup>

116. In managing the forces at work during protests, consideration should be given to the question of what typically prompts the police to use coercive measures. This includes the nature of the State structure (is there civilian oversight of the police?); public opinion and norms; threat posed by the demonstration (based on its size and militancy); and the tactics used by the protestors.

117. Police knowledge,<sup>42</sup> that is, the clear understanding by the police of their tasks and challenges, will have a strong influence on possible resort to violence by officers. Although they operate within a legal framework, the police have considerable discretionary powers, especially when decisions need to be taken on the spot, as is often the case in protest policing, and that is when their value systems come to the fore. Appropriate training of the police is therefore essential.

118. While the negotiated management approach has, over the last few decades, prevailed in much of the United States and Europe, it is important to note that it is not universally accepted in this area. In fact, there are indicators that less tolerant approaches, sometimes described as paramilitary policing, may be coming back into vogue, particularly in respect of, but not confined to, transnational anti-globalization protests. Governments may also feel that the floodgates have been opened by the events in Tunisia and other countries, and take a hard line on protest.

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<sup>41</sup> Philip B. Heymann, ed., *Towards Peaceful Protest in South Africa* (Pretoria, HSRC Publishers, 1992), p. 6.

<sup>42</sup> See della Porta and Reiter, eds., *Policing Protest: The control of mass demonstrations in Western democracies* (see para. 106, fn. 40), p. 228.

## **F. Policing protest: evolving principles**

119. The Special Rapporteur suggests that a set of norms, such as the following, could provide a foundation for managing demonstrations in a way that protects the lives of all concerned:

1) The State has a duty to facilitate public protest by providing protesters with access to public space, and protecting them, where necessary, against outside threats.

2) The proper management of demonstrations depends on communication and collaboration among protesters, local authorities and police – the so-called “safety triangle.” Dialogue, and not draconian legislation, is the key.

3) There should be a presumption against limitations on assemblies (including prohibition and conditions). Limitations should be prescribed by law and be necessary, in a democratic society, to achieve a legitimate purpose, such as protecting the rights of others, and should, in principle, be content neutral. The possibility of appeal against limitations before an independent judicial organ should be available.

4) During the actual protest, the normal preoccupation about law and order by State agents should, as far as possible, give way to the narrower focus of preserving the peace, and protecting people and property against harm.

5) International standards in respect of the use of force by the police centres around necessity and proportionality. Firearms should be used only to prevent grievous bodily harm and death. Lethal force may be used intentionally only if the objective is to protect life, and less harmful measures are inadequate.

6) The standards applicable to the right to assembly and the use of force should be accessible to the public, e.g., through readily available legislation, to enable adequate planning and rational decision-making on how to protect one’s own interests.

7) Procedures should exist, as a matter of course, for the investigation of any use of deadly force or discharge of firearms during demonstrations, and adequate disciplinary action should be taken where appropriate.

## **G. Some entry points for assembly law reform**

120. A starting point in respect of assembly law reform would be to identify existing avenues that may be used. The following are some examples.

### **At the global level**

121. An expert group could be convened within the United Nations to consider the different options, such as the drafting of guidelines or an additional protocol to the International Covenant on Civil and Political Rights on this topic. The Human Rights Committee could consider adopting a general comment on freedom of peaceful assembly and the use of force. Given that international standards often are couched in general terms, ensuring that such an international instrument is adapted into something like model legislation would be useful.

122. Various treaty bodies regularly have the opportunity to comment on State party reports that deal with assembly and use of force issues, as well as broader constraints on giving effect to assembly rights, such as states of emergency.

123. In the Human Rights Council the universal periodic review offers opportunities. The mandate of the new Special Rapporteur on freedom of assembly and of association<sup>43</sup> will be a welcome addition to the special procedures, with the mandates of the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on extrajudicial, summary or arbitrary executions retaining their relevance. Collaboration between these mandates in respect of managing demonstrations may be required.

124. Within the mandate on extrajudicial, summary or arbitrary executions, it is envisaged that country studies will in future be conducted on the basis of a number of agenda items that will be used for all countries in order to establish benchmarks. One of these agenda items will be regulations and practices regarding the use of force by the police.

125. The codes of conduct of organizations such as Interpol and the International Association of Police Chiefs – which are subject to occasional review – provide a way of reaching police forces worldwide.

126. Civil society also has an ongoing responsibility in terms of defining and monitoring applicable norms.

#### **At the regional level**

127. The African Commission on Human and Peoples' Rights has a Special Rapporteur on human rights defenders. The Commission regularly adopts resolutions on human rights issues and elaborates rights in the African Charter.

128. The mandate of the Pan-African Parliament could be interpreted to include the drafting of model legislation, which could, for example, deal with the right to assembly.

129. The Inter-American Commission on Human Rights engages this issue on a regular basis and has a Special Rapporteur for freedom of expression who plays an important role in this regard.

130. One of the most impressive regional initiatives on assembly law is the Organisation for Security and Co-operation in Europe (OSCE),<sup>44</sup> which has identified six guiding principles in respect of freedom of assembly. This project includes legal reviews of legislation dealing with assembly rights, as well as monitoring laws and practices related to assemblies, and could be regarded as a model for similar actions elsewhere.

#### **At the domestic level**

131. Transition periods, where societies make a conscious effort to replace a repressive system with a more democratic one, offer windows of opportunity to incorporate international human rights standards into domestic systems.

132. There is a constant need for stock-taking and reform in respect of assembly rights in all societies. National human rights institutions and law reform commissions should also take up the cause. There could be ample opportunity in a number of countries for court challenges to assembly laws to be brought under the constitutions of these countries.

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<sup>43</sup> Human Rights Council resolution 15/21, para. 5.

<sup>44</sup> See OSCE/ODHIR, *Guidelines on freedom of peaceful assembly* (Warsaw, 2007), available at <http://www.osce.org/odihr/24523>; see also Neil Jarman and Michael Hamilton, "Protecting Peaceful Protest: The OSCE/ODIHR and freedom of peaceful assembly," in *Journal of Human Rights Practice* 1:2 (2009), pp. 208-235.

133. Regularly updating codes of conduct for the police and increasing “police knowledge” are indispensable, as is the existence of independent police complaints agencies.

#### IV. Conclusions

134. Two of the main grounds on which rights in the context of demonstrations may be limited are the maintenance of public order, and protection of the rights of others. Divergent views on the limitations and the use of force during public protest turn on an emphasis on either of these two. The escalated force approach reflects a preference for the protection of public order; the negotiated management approach, which focuses on the preservation of peace, hinges the question as to whether protest should be curtailed on whether the rights of others are threatened.

135. Likewise, as has been pointed out, the central distinction made by domestic legal systems tends to be between legal and illegal protest, while international law is rather inclined to draw the line between non-violent and violent protests. The concern of the former centres around public order; the latter prioritises the preservation of peace as the objective for police or other State intervention.

136. Under the public order paradigm, it is not difficult to argue that rights – including the right to life – may be limited during protest actions. However, if the starting point is that rights should be limited only to protect the rights of others, the bar is set higher. The life of one person may be sacrificed only if it is necessary to protect the life of others.

137. There can be no doubt about the importance of both maintenance of public order and protection of the rights of others. However, it is also clear that in some of the life-and-death situations presented by demonstrations, the emphasis on one of these two approaches will lead to different decisions on whether to use firearms. Given the status of the right to life as the supreme human right, and the irreversible nature of decisions involving lethal force, if the generally more generous approach advanced by international standards is ever to play a role, it will have to be in this context.

138. Based on the above overview of the norms in respect of the use of force by the police during demonstrations, it can be concluded that it is problematic to make rigid distinctions between grounds for the limitation of the right to life into the categories of self-defence, arrest and riot control. The impression is created that the standards differ, and indeed, as we have seen at the domestic level, countries often implement lower standards of scrutiny in respect of the use of lethal force during demonstrations. It is proposed that over time, the centrality of the norm of self-defence, as the guiding principle for the use of deadly force, should be asserted more strongly.

139. In the future, when the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other instruments are revised, the overreaching principle in respect of the use of deadly weapons by law enforcement officials should be self-defence. Reference to arrest or riot control should be secondary and focused on implementation in those contexts. Another way of putting it would be to see the overriding norm as “necessary measures of law enforcement to protect life.”<sup>45</sup>

<sup>45</sup> Rodley, *The treatment of prisoners under international law* (see para. 53, fn. 24), p. 252.

140. Much has been said about the need to ensure greater compliance with international standards in order to protect lives, and that has been the main point of this report. Taking a few steps back, however, there is no escaping the conclusion that a stronger adherence to human rights standards in general would remove many of the underlying causes of demonstrations that turn violent.

141. A free society is characterised by its willingness to tolerate dissent, as expressed also through protest action. As such, a free society may experience some discomfort with dissent. This is a healthy attitude because dissenters in such a society would not have to resort to attacking the system as such. In a free society, the desire to engage in extreme measures largely disappears. Life would be more secure in such a society.

## V. Recommendations

142. United Nations bodies involved in human rights monitoring should closely scrutinise the laws and practices of the countries concerned in respect of compliance with the relevant international standards on freedom of assembly, including the use of force and, in particular, the use of lethal force. The effect of states of emergency on assembly rights, in particular, is a matter of concern. There should be a focus on the role played by domestic institutions in respect of assembly.

143. The basic principles for managing demonstrations should be elaborated more clearly, so as to set out the international law standards applicable to demonstrations (non-violent and violent; legal and illegal), with special reference to the use of (deadly) force by the police during demonstrations. This could be done by an expert group, or by the Human Rights Committee as a general comment on articles 6 and 21 of the International Covenant on Civil and Political Rights. In view of the extensive domestic legal reform that will be required, a model law on the management of protest and the use of force in that context should be drafted. This process is important, not only in terms of providing clarity on the applicable standards, but also in order to raise awareness and solicit collaboration for a global law reform effort in respect of assembly rights.

144. The United Nations should engage with regional, as well as domestic, human rights initiatives such as those outlined in the report as entry points in order to ensure greater conformity with international standards.

145. United Nations peacekeepers that may have to deal with protests should be trained and equipped on an ongoing basis to do so in a manner that conforms to international standards.

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