

FREEDOM OF ASSEMBLY

A Checklist for Law Reform Advocates



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INTRODUCTION

This checklist aims to help legislators, policymakers, and legal reform advocates ensure their country's laws comply with the African Commission on Human and Peoples' Rights' Guidelines on Freedom of Association and Assembly in Africa. The checklist highlights key issues to help drafters confirm that the provisions within the relevant laws meet the standards laid out in the Guidelines and identify the provisions that may not fully protect the rights to the freedom of association and assembly.

Kindly note that within the context of this survey, the term "organizer" means the person who convenes the assembly, which may include demonstrations, protests, or other public gatherings. The "organizer" usually handles logistics related to the event.

How to Use the Checklist

The "→" sign next to the response options indicates that your country's legal framework may not comply with the Guidelines. This sign prompts readers to look at the next column for a "Suggested Action" to bring the country's laws, policies, or practices more in line with international and regional standards. The column under "Notes on Actions Taken" contains fillable text fields, where readers can type notes.



GENERAL PRINCIPLES

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Which international and regional treaties that protect the freedom of assembly has your country signed?	<p>Please select all that apply:</p> <p>International Covenant on Civil and Political Rights</p> <p>African Charter on Human and Peoples' Rights</p> <p>None →</p>	Determine the steps your country can take to accede to the ICCPR or ACHPR, if you country has not signed either.	
2. Does your country's Constitution protect the freedom of assembly?	<p>Yes.</p> <p>No. →</p>	Ensure that the Constitution explicitly recognizes and protects the right to the freedom of association.	
3. Is there a law or policy that explicitly governs assemblies?	<p>Yes. →</p> <p>No. →</p>	<p>If Yes, review all laws and policies that govern assemblies (such as a Maintenance of Peace and Order Act) to ensure that they are in accordance with international human rights law, including the ACHPR Guidelines.</p> <p>If No, consider adopting a law that explicitly lays out the rules governing assemblies, ensuring that the law abides by international human rights law, including the ACHPR Guidelines.</p>	



GENERAL PRINCIPLES (CON'T)

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
<p>4. If the law exists, is the scope of the law clearly laid out? That is, is it clear which types of assemblies are governed by the law?</p>	Yes. No. →	Ensure that the scope of the relevant law or policy is clearly stated. Consider explicitly listing the types of assemblies to which the law or policy applies (e.g. public meetings, public gatherings, protests and demonstrations of a specific size, etc.).	
<p>5. Does the relevant law or policy clearly name the authority responsible for regulating assemblies?</p>	Yes. No. →	Ensure that the relevant law or policy clearly names the authority responsible for regulating assemblies.	
<p>6. Can any person organize an assembly?</p> <p>“Any person” includes but is not limited to citizens, non-citizens, children, permanent and temporary residents, refugees, persons with criminal background.</p>	Yes. No. →	Ensure that the law explicitly protects the right of “any person” to organize an assembly.	
<p>7. Can any person participate in an assembly?</p>	Yes. No. →	Ensure that the right of “any person” to participate in an assembly is explicitly protected under law.	



NOTIFICATION

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
<p>1. Are spontaneous assemblies permitted to proceed?</p> <p>Spontaneous assemblies include assemblies that occur as immediate reactions to events.</p>	Yes. No. →	Consider explicitly protecting the right to participate in spontaneous assemblies in the relevant law or policy. Ensure that spontaneous assemblies will not be punished.	
<p>2. Must the organizer notify the regulating authority before proceeding with the assembly?</p>	Yes. → No.	Review the law or policy to ensure that in general, an organizer may proceed with the assembly after notifying the regulating authority, and that additional approval from the regulating authority is not required.	
<p>3. Are smaller assemblies allowed to proceed without notifying the regulating authority?</p>	Yes. No. →	Consider allowing assemblies that are below a threshold number to proceed without notifying the regulating authority.	
<p>4. Must the organizer notify the regulating authority more than 5 days in advance of the planned assembly?</p>	Yes. → No.	Considering setting the notice period to be no more than 5 days, ideally 2 days, in advance of the assembly.	



NOTIFICATION (CON'T)

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
5. If notification is required, is the information required to be submitted clearly listed in the relevant law?	Yes. No. →	Ensure that the information required within the notification is clearly stated in the relevant law or policy. For example, the law might list the required information, such as the date, time, location, and itinerary of the assembly, as well as the contact details of the organizer.	
6. If notification is required, is the procedure for notifying the regulating authority clearly stated in the law?	Yes. No. →	Review the law to make sure each step of the process for submitting a notification is clear. For example, the law could clearly state whether further steps are available to discuss conditions on the assembly and confirm an organizer's right to appeal any conditions imposed by the regulating authority to an independent body.	
7. If notification is required, does the organizer have to pay a fee to notify the regulating authority?	Yes. → No.	Review the fee to ensure that it is not too burdensome. For example, consider comparing the fee to the average income of an individual in the country, to make sure that an individual does not have to spend a large proportion of his or her income to organize an assembly.	



NOTIFICATION (CON'T)

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
8. Does a regulating authority have to approve the assembly before it can proceed?	Yes. → No.	Consider removing the requirement for the regulating authority to approve an assembly before it proceeds. For example, the relevant law or policy might include a provision that states that the organizer can proceed with the assembly even if the regulating authority does not respond to a notification, and that if the regulating authority would like to place conditions on the assembly, he or she must directly contact the organizer to set up a consultation regarding the conditions.	
9. Does the regulating authority allow counter-demonstrations and simultaneous protests?	Yes. No. →	Ensure that counter-demonstrations and simultaneous demonstrations are permitted. Ensure that the law requires public safety authorities facilitate the peaceful procession of that all demonstrations.	



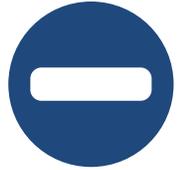
FREEDOM OF EXPRESSION IN THE CONTEXT OF ASSEMBLIES

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Are all assemblies beholden to the same limitations on content or subject?	Yes. No. →	Review the relevant law or policy to ensure that the regulating authority shall not discriminate among assemblies based on content or subject.	
2. Are assemblies addressing matters of public concern, public interest, or political or policy affairs, permitted to proceed?	Yes. No. →	Consider explicitly stating in the relevant law or policy that speech addressing matters of public concern, public interest or political or policy affairs, including as exercise in the context of an assembly shall be provided maximum protection by the State.	
3. Can the regulating authority impose conditions on or prohibit assemblies based on characteristics of participants or organizers, such as sex, race, color, ethnic or social origin, language, religion or belief, etc.?	Yes. → No.	Consider barring the regulating authority from imposing conditions on or prohibiting assemblies based on the characteristics of the participants or organizers, including sex, race, color, ethnic or social origin, language, religion, or belief, among other characteristics.	



FREEDOM OF EXPRESSION IN THE CONTEXT OF ASSEMBLIES (CON'T)

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
4. Can the regulating authority restrict the items carried during assemblies (e.g. banning flags, masks, symbols, or restricting the content displayed on those items)?	Yes. → No.	Review the law or policy to ensure that any restrictions imposed on items carried during assemblies are narrowly construed and necessary in the interest of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.	
5. Is the media permitted to freely report on assemblies?	Yes. No. →	Amend the law or policy to recognize the right of the media to freely report on assemblies.	



BLANKET BANS

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Are there any particular locations or times during the day where and when assemblies are always banned (e.g. within the proximity of Parliament)?	Yes. → No.	Consider removing blanket applications of restrictions, such as banning assemblies in particular locations or at certain times of day. Rather, the relevant law or policy might require the regulating authority to consider bans on assemblies on a case-by-case basis, to ensure that any restriction or prohibition is a measure of last resort and the least restrictive measure possible to achieve a legitimate aim, such as national security or public safety, public order, public health or morals, or the protection of the rights and freedoms of others.	



CONDITIONS AND PROHIBITION

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Is the regulating authority required to promptly communicate conditions imposed on an assembly?	Yes. No. →	Ensure that the regulating authority is required to convey any proposed conditions on an assembly in a timely manner.	
2. If the regulating authority imposes conditions on or prohibits an assembly, is the authority required to provide an explanation of the rationale for the decision?	Yes. No. →	Ensure that the regulating authority must share in writing the rationale for any proposed conditions on or prohibition of the assembly, including an explanation for not choosing a less restrictive measure, if any.	
3. Are all conditions required to be closely related to particular concerns about the assembly and narrowly tailored?	Yes. No. →	Consider requiring the regulating authority to show that any conditions imposed are closely related and narrowly tailored to the stated concerns about the assembly.	
4. Are prohibitions of assemblies required to be a matter of last resort?	Yes. No. →	Consider requiring the regulating authority to show that other means of addressing particular concerns about the assembly have been tried before imposing an absolute prohibition of the assembly.	



PROTECTION

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Is the Government obligated to actively protect all participants of assemblies from interference, harassment, intimidation, and attacks by third parties?	Yes. No. →	Ensure that the relevant law or policy requires the Government (such as through law enforcement officers) to actively protect all participants of assemblies, including counter-demonstrators, from interference, harassment, intimidation, and attacks by third parties.	
2. Is the Government obligated to actively protect all bystanders and other citizens from harm or infringement on their rights during an assembly?	Yes. No. →	Ensure that the relevant law or policy requires the Government (such as through law enforcement officers) to actively protect all bystanders and other citizens from harm or infringement on their rights during an assembly.	
3. Are the costs of security and safety measures fully borne by the Government, as opposed to levied on demonstration/protest organizations and participants?	Yes. No. →	Consider writing into law that the Government is obligated to bear the costs of ensuring safety and security at an assembly.	



SANCTIONS AND REMEDIES

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
1. Are criminal sanctions applied in response to violations of laws or policies governing assemblies?	Yes. → No.	Consider removing criminal sanctions from the relevant law. Consider re-evaluating existing fines to ensure that the fines are not overburdensome. For example, decrease a fine that constitutes a large proportion of the average yearly income of an individual in your country.	
2. Are sanctions required to be proportionate to the gravity of the misconduct in question?	Yes. No. →	Ensure that sanctions for violations to the law or policy are proportionate to the gravity of the misconduct in question.	
3. Are sanctions for violations of the law or policy required to be applied only by an impartial, independent, and regularly constituted court, and only after a full trial and appeal process?	Yes. No. →	Consider requiring sanctions related to assemblies to be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process.	
4. Are the organizers of an assembly held personally liable for harms or legal violations perpetrated by other participants at the assembly?	Yes. → No.	Ensure that organizers are not held personally liable for harms or other legal violations perpetrated by participants of the assembly.	



SANCTIONS AND REMEDIES (CON'T)

QUESTION	RESPONSE	SUGGESTED ACTION	NOTES ON ACTION TAKEN
5. Can an organizer of an assembly appeal any decision by the regulating authority (such as placing conditions on or prohibiting an assembly) to an impartial, independent, regularly constituted court?	Yes. No. →	Ensure that an organizer may appeal a decision by the regulating authority to an impartial, independent, regularly constituted court.	
6. Where the right to peaceful assembly has been infringed, do organizers and participants have a right to a remedy?	Yes. No. →	Ensure that an individual may access a remedy where it has been found that the right to peaceful assembly has been infringed. Appropriate remedies could include the facilitation of future assemblies as necessary, the adoption of measures to prevent future infringement on the right to peaceful assembly, compensation for any harms that have occurred, and investigation, prosecution, and punishment of perpetrators of discriminatory conduct or attacks in the course of an assembly.	