



Written Submission of the International Center for Not-for-Profit Law on the Right to Peaceful Assembly in the United States

In Support of the Thematic Hearing on
**The Rights to Freedom of Association, Peaceful Assembly,
and Freedom of Expression in the United States**

166th ordinary period of sessions

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Introduction

The International Center for Not-for-Profit Law (ICNL) has worked in one hundred countries, including the United States, to strengthen the legal environment for civil society and to advance the freedoms of association, assembly, and expression.

This submission is for the Inter-American Commission on Human Rights' (IACHR) thematic hearing to address matters relating to the general situation of the rights to freedom of association, peaceful assembly, and freedom of expression in the United States. While ICNL also has concerns related to the freedom of association and the freedom of expression,¹ this submission focuses on the right to peaceful assembly in the United States.

Article 15 of the American Convention on Human Rights recognizes the right to peaceful assembly without arms.² Article 21 of the American Declaration of the Rights and Duties of Man similarly guarantees the right to peaceful assembly.³

In the *Second Report on the Situation of Human Rights Defenders in the Americas* (2011), the IACHR re-affirmed and highlighted that “peaceful social protest, as a manifestation of freedom of assembly, is a fundamental tool in the defense of human rights, essential for engaging in political and social criticism of authorities’ activities, as well as establishing positions and plans for action with regard to human rights.”⁴

¹ For instance, the sweeping provisions in the Foreign Agents Registration Act (FARA) and recent Congressional attempts to strengthen the enforcement of that Act raises significant freedom of association concerns. See, ICNL, FARA’S DOUBLE LIFE ABROAD (2017); SB 2039 (2017); HB 4170 (2017). The IACHR has recognized that the freedom of association includes the right of civil society organizations to create their own structure and carry out their goals with domestic or international funding. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, SECOND REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS 70, 73 (2011) [hereinafter “HUMAN RIGHTS DEFENDERS REPORT”]. If implemented on its face, FARA would cover a range of organizations that engage in advocacy and receive international funding or act at the request of a partner organization or other entity located outside the United States. An organization covered by the Act would have to register with the Department of Justice, provide periodic reports, and make a “conspicuous statement” in their interactions with the public that they are acting on behalf of a foreign principal. The Act’s burdensome registration and reporting requirements and the stigmatization of having to register as a “foreign agent” would likely have a chilling effect on the freedom of association in the United States. The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has noted that “stigmatizing or delegitimizing work of foreign-funded CSOs by requiring them to be labeled as ‘foreign agents’” is “problematic” under international law. REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION, para. 20 (April 2013)

² AMERICAN CONVENTION ON HUMAN RIGHTS, Art. 15. Under the Convention there can be “No restrictions of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights of freedom of others.”

³ AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN, Art. 21. (“Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.”)

⁴ HUMAN RIGHTS DEFENDERS REPORT, *supra* note 1 at 49.

The United States is a longstanding democracy that prides itself on setting an international standard for the protection of civil liberties, including the right to peaceful assembly. The First Amendment of the U.S Constitution explicitly provides for “the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.”⁵

Yet, the right to peaceful assembly in the United States faces significant current challenges and looming threats. This submission is divided into two parts. The first part provides recent examples of how the response by law enforcement and the government to demonstrations have restricted the right to peaceful assembly. The second part provides recent examples of state-level executive orders and legislation that have been passed or are currently being considered that also restrict this right. The examples provided in this submission are not meant to be comprehensive, but rather be illustrative of the broader challenges to the right to peaceful assembly in the United States. The submission ends with a set of requests of the Commissioners and the United States.

I. Government Response to Protests

A. Militarization

The United Nations’ Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association carried out a mission to the United States in July 2016. In his 2017 report of his findings, he expressed concern “that it has become commonplace [in the U.S.] for police to respond to peaceful demonstrations with military-style tactics, full body armour, and an arsenal of weaponry suited more to a battlefield than a protest.”⁶ He went on to conclude that “the widespread militarization of police needlessly escalates tensions and provokes equally aggressive reactions. Protesters are not war enemies and should never be treated as such.”⁷

Following the heavily armed police response to protests against the killing of African American men in Ferguson, Missouri, and elsewhere, President Obama issued Executive Order 13688 in 2015 scaling back and limiting a federal program that transfers military equipment to police departments across the country.⁸ In August 2017, however, President Trump issued Executive Order 13809 revoking President Obama’s earlier Executive Order, increasing the risk of militarized police response to protesters.⁹

⁵ U.S. CONST., amend. I.

⁶ REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION ON HIS FOLLOW-UP MISSION TO THE UNITED STATES OF AMERICA, June 12, 2017, para 37 [hereinafter “UN Special Rapporteur Report”]

⁷ *Id.*

⁸ Executive Order 13809. *See*, ICNL protest law tracker at <http://www.icnl.org/usprotestlawtracker/> [hereinafter “ICNL Protest Law Tracker”].

⁹ *Id.*

B. Disproportionate Use of Force and Intimidation

Law enforcement has repeatedly used disproportionate force when managing demonstrations in the United States. The UN Special Rapporteur on the Freedom of Assembly and of Association in his 2017 report noted “numerous complaints that police used excessive force to arbitrarily arrest protestors for minor acts such as stepping off crowded sidewalks . . . [or] in dubious circumstances that suggested police abuse of power.”¹⁰ Significantly, the Special Rapporteur went on to conclude “that demonstrations by different communities are policed differently, with racial, ethnic, cultural and class-based biases.”¹¹ Such excessive force can not only potentially endanger protestors physically, but also have a chilling effect on the freedom to assemble and the freedom of expression.

Participants and outside observers of protests have complained of an excessively forceful police response on a number of recent occasions. In September 2017, for instance, the ACLU brought a lawsuit against the city of St. Louis for the response of law enforcement to demonstrators protesting the acquittal of a police officer charged in the shooting death of Anthony Lamar Smith, a 24 year old African American man. The ACLU suit alleges that police in riot gear corralled and trapped protestors (a tactic known as “kettling”); sprayed them with chemical agents without proper warning; and interfered with their right to record police officers.¹² Protesters complained that police were unnecessarily aggressive when arresting 120 protestors, including by taunting demonstrators with the protest chant “whose streets, our streets.”¹³ In a separate lawsuit, two documentary film makers present at the protest claim that the police interfered with their right to film the protest, and unlawfully beat them and sprayed them with chemicals before arresting them.¹⁴

Similarly, there have been allegations of excessive use of force by law enforcement at a demonstration protesting President Trump in Phoenix, Arizona in August 2017¹⁵ and by law enforcement using water cannons against protestors in cold weather at Standing Rock, North Dakota, in November 2016.¹⁶

¹⁰ UN Special Rapporteur Report, *supra* note 6 at para. 36.

¹¹ *Id.* at 38.

¹² Maleeha Ahmed and Alison Dreith vs. City of St. Louis Missouri, No. 4: 17-cv-2455, In the United States District Court Eastern District of Missouri, filed 9/22/2017 <https://bloximages.newyork1.vip.townnews.com/stltoday.com/content/tncms/assets/v3/editorial/b/5f/b5ff3d9b-35ab-5b4a-a0c6-a5b1f4df87cd/59c54c97acef9.pdf>

¹³ Susan Hogan, *St. Louis officers shout ‘whose streets, our streets’ while arresting protestors*, WASHINGTON POST, Sept. 18, 2017

¹⁴ Rachel Lippman, *Second lawsuit filed against St. Louis over police tactics in protest*, ST. LOUIS AMERICAN, Sept. 27, 2017

¹⁵ ACLU, *ACLU of Arizona Calls for Independent Investigation, Urges Witnesses to Submit Additional Evidence*, Aug. 23, 2017, <https://www.aclu.org/news/police-failed-protect-first-amendment-rights-protesters>

¹⁶ Julia Carrie Wong and Sam Levin, *Standing Rock protestors hold out against extraordinary police violence*, GUARDIAN, Nov. 29, 2017

C. Criminalization

Law enforcement and prosecutors have also been accused of aggressively arresting and bringing charges against protesters. In one recent, high-profile incident known as the J20 protests, the US Attorneys' office brought charges against 150 defendants in a protest around the Inauguration of President Trump that led to destruction of property on January 20, 2017 in Washington DC. Many of the defendants are facing felony charges of inciting a riot and destruction of property punishable up to 10 years in jail. Many of those who are being tried were not alleged to have caused damage to any property themselves, but instead are accused of taking part in a demonstration that they should have known would cause vandalism.¹⁷ Critics argue such aggressive prosecutions could lead to the chilling of protests in the future if participants are concerned they could be held criminally liable for the actions of other demonstrators.

In another high profile incident of aggressive prosecution, a protester was removed from Congress after laughing at a compliment given to Senator Jeff Sessions during his confirmation hearing for Attorney General in January 2017. When she was removed she also yelled out her negative political opinion of Mr. Sessions. She was convicted of misdemeanor charges before a judge ordered a retrial, as prosecutors had argued that she could be convicted simply because she had laughed. After months of subjecting the protester to months of judicial process, federal prosecutors eventually decided to drop all charges in November 2017.¹⁸

D. Surveillance

Excessive surveillance of protesters, and their supporters, by law enforcement can chill the rights to freedom of assembly and freedom of expression as well as violate privacy rights.¹⁹ Law enforcement allegedly infiltrated several planning meetings for the J20 protests.²⁰ After the protests, federal prosecutors requested a warrant to access information on the Facebook page for the organization of the demonstration. The warrant requested information not only on those who said they would attend the protest, but also those who simply "liked" the page (some 6000 persons).²¹ A

¹⁷ Paul Duggan and Keith L. Alexander, *Amid questions about the line between free speech and rioting, trial to begin in Inauguration Day protest*, WASHINGTON POST, Nov. 19, 2017

¹⁸ Maya Salam, *Case is Dropped Against Activist Who Laughed at Jeff Sessions' Hearing*, NY TIMES, Nov. 7, 2017.

¹⁹ JOINT REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION AND THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS ON THE PROPER MANAGEMENT OF ASSEMBLIES 17 (Feb. 2016) [hereinafter "UN Special Rapporteurs Guidelines on Management of Assemblies"]

²⁰ Perry Stein and Keith L. Alexander, *D.C. police infiltrated inauguration protest group, court papers show*, WASHINGTON POST, April 18, 2017.

²¹ Ann E. Marimow, *ACLU fights federal warrants seeking political communications on Facebook*, WASHINGTON POST, Sept. 29, 2017.

federal judge later limited the request, requiring among other provisions for Facebook to redact the identities of those who “liked” the page.²²

The J20 protest is not the only recent high profile incident of surveillance. For example, the Memphis police have been accused of creating a “watch list” of Black Lives Matter protesters²³ and the New York City police of retaining multimedia records of Black Lives Matter protests, tactics that have been called intimidating by critics.²⁴

E. Mismanagement of Protests

The Inter-American Commission in its *Second Report on the Situation of Human Rights Defenders in the Americas* found that, “The protection of the right of assembly involves not only the State’s obligation not to interfere arbitrarily in its exercise, but also, in some circumstances, the obligation to adopt positive measures to guarantee this right.”²⁵ This includes protecting demonstrators from third party attacks.

In Charlottesville, in August 2017 after brawls between white nationalists and counter-protesters at the Unite the Right rally, a car was driven into a crowd of counter-protesters. At the end of the day, one demonstrator was killed and dozens of others injured (two state troopers monitoring the protests were also killed when their helicopter crashed).²⁶ Many observers criticized the police for not ensuring the safety of all demonstrators as well as the public.

In another high profile incident in May 2017, supporters and security of Turkish President Recep Tayyip Erdogan attacked demonstrators of the President outside the Turkish Ambassador’s residence in Washington DC, leaving eleven people injured.²⁷

The ability of demonstrators, and members of the public, to openly carry firearms in some U.S. states does make it more difficult for law enforcement to ensure demonstrations are free of violence or the threat of violence. However, this only

²² Ann E. Marimow, *Judge limits search of Facebook accounts linked to Inauguration Day Protests*, WASHINGTON POST, Nov. 13, 2017.

²³ Civicus Monitor, *States Consider Legislation to Limit and Control Protests*, March 28, 2017 available at <https://monitor.civicus.org/newsfeed/2017/03/28/bills-curtailing-protests-and-surveillance-initiatives-move-forward-various-states/>

²⁴ Civicus Monitor, *Protest Rights Increasingly Undermined in USA*, Oct. 21, 2016, <https://monitor.civicus.org/newsfeed/2016/10/21/civic-freedoms-increasingly-undermined-usa/>

²⁵ HUMAN RIGHTS DEFENDERS REPORT, *supra* note 1 at 50.

²⁶ Matt Pearce, Robert Armengol, and David Cloud, *Three dead, dozens hurt after Virginia white nationalist rally is dispersed; Trump blames many sides*, LA TIMES, Aug. 12, 2017, available at <http://www.latimes.com/nation/nationnow/la-na-charlottesville-white-nationalists-rally-20170812-story.html>

²⁷ Nicholas Fandos and Christopher Mele, *Erdogan Security Forces Launch ‘Brutal Attack’ on Washington Protesters, Officials Say*, NY Times, May 17, 2017, available at <https://www.nytimes.com/2017/05/17/us/turkish-embassy-protest-dc.html>

makes it more important that law enforcement protect protesters from potential third party attacks.

II. Recent Bills and Executive Orders Restricting the Right to Protest

Since November 2016, 27 states have considered 48 bills that would restrict the right to protest. Eight of these bills have been signed into law and 25 are awaiting further consideration.²⁸ In addition, there has been one federal executive order and four state executive orders (covering three states) that restrict the right to protest.²⁹ In his 2017 report on his mission to the United States, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association referenced the “the increasingly hostile legal environment for peaceful protesters in some states.”³⁰ In March 2017, he and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a letter to the United States Government expressing concern about bills in 16 states that if enacted “would highly curtail the rights to freedom of opinion and assembly in ways that are incompatible with US obligations under international human rights law.”³¹

A. Disproportionate Penalties

As discussed in the last section, the threat of disproportionate penalties can chill participation in nonviolent protests. Yet a number of states in recent months have considered or actually approved stronger penalties for activity that frequently arises around protests.

For instance, several bills have increased penalties for obstructing traffic. A South Dakota bill signed by Governor Dennis Daugaard in March 2017 makes it a class one misdemeanor to block traffic during a protest, punishable by one year in prison. A bill proposed in Missouri would make blocking traffic punishable by up to seven years³² and a bill in Iowa up to five years.³³

As the IACHR’s Special Rapporteur for the Freedom of Expression explained in a 2008 report:

Naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases

²⁸ ICNL Protest Law Tracker, *supra* note 8.

²⁹ *Id.*

³⁰ UN Special Rapporteur Report, *supra* note 6, at para 32.

³¹ See Civicus Monitor, *With Massive Protests Underway, UN Experts Call for Repeal of Anti-Protest Legislation*, April 28, 2017, available at <https://monitor.civicus.org/newsfeed/2017/04/28/massive-protests-underway-un-experts-call-repeal-anti-protest-legislation/>

³² Missouri HB 826; ICNL Protest Law Tracker, *supra* note 8.

³³ Iowa SF 4261 ICNL Protest Law Tracker, *supra* note 8.

of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression.³⁴

In May 2017, after the Dakota pipeline protests, the Governor of Oklahoma signed into law a bill that increased penalties for willfully entering property without permission containing “critical infrastructure.”³⁵ A number of sites are listed as “critical infrastructure” ranging from a petroleum refinery to electrical power lines and “associated equipment” (which presumably includes something as mundane as a telephone poll). Such a violation requires a fine of not less than a \$1000 or 6 months in jail and if it was found that the perpetrator intended to damage property a fine of not less than \$10,000 and one year in jail. If the person does damage property they can receive a fine of \$100,000 or imprisonment up to 10 years.

Charging protesters, if they commit an infraction of the law, for the costs of the government responding to protests can also chill participation in demonstrations. Massachusetts, Minnesota, and Pennsylvania are currently considering legislation that would charge protesters, in part or in full, the costs of the response of security services if convicted of charges such as unlawful assembly, public nuisance, intentionally blocking traffic, or any misdemeanor or felony committed during a demonstration.³⁶

Finally, several states have recently proposed or signed into law bills that would require mandatory sanctions against protesters on university campuses that disrupt the expression of others, such as campus speakers.³⁷ State universities have also taken restrictive measures through administrative action. For example, in October 2017 the University of Wisconsin Board of Regents passed a policy, that closely mirrored a proposed state law, which requires mandatory punishment for students who disrupt campus speakers,³⁸ and Ohio University in September 2017 adopted an interim policy that banned all student protests inside campus buildings.³⁹

B. Conspiracy

The IACHR has noted that holding an individual or organization responsible for property damaged by another party during a demonstration can infringe the right to

³⁴ Inter-American commission on human rights: report of the Office of the special rapporteur for Freedom of expression, para. 70 (2008).

³⁵ Civicus Monitor, *New State Laws Increase Penalties for Protest Laws in Oklahoma*, <https://monitor.civicus.org/newsfeed/2017/06/06/new-state-laws-increase-penalties-protests-usa/>

³⁶ ICNL Protest Law Tracker, *supra* note 8.

³⁷ See NC HB 527 (signed into law June 29, 2017) ; IL HB 2939 (pending); Michigan SB 350 (pending); Oregon SB 540 (pending); Wisconsin AB299 (pending); ICNL Protest Law Tracker, *supra* note 8.

³⁸ Keren Herzog, *Regents approve punishments up to expulsion for UW students who repeatedly disrupt speakers*, MILWAUKEE JOURNAL SENTINEL, Oct. 6, 2017, available at <http://www.jsonline.com/story/news/education/2017/10/06/regents-consider-punishments-uw-students-who-disrupt-speakers/738438001/>

³⁹ *Ohio University bans indoor protests with new speech policy*, CHICAGO TRIBUNE, Sept. 24, 2017, <http://www.chicagotribune.com/news/sns-bc-oh--freedom-of-expression-policy-ohio-20170924-story.html>

protest by chilling participation in protests.⁴⁰ Yet, state bills have recently been passed or proposed that would do exactly that.

As previously discussed, in May 2017, the Oklahoma Governor signed into law a bill increasing penalties for protesters who trespass or damage “critical infrastructure.” Under the new Act, any organization that is found to be a “conspirator” in any of the crimes listed in the legislation shall face a fine of ten times the amount the individual receives, which would mean a fine up to \$1,000,000.⁴¹

Arizona introduced a bill in February 2017 that would broaden the definition of “riot” from the reckless use or threat of force that disturbs the public peace, to such use or threat of force that either disturbs the public peace or causes property damage.⁴² Under the bill, riots would be included under “racketeering” offenses intended for organized crime and organizers and protesters, who do not themselves cause property damage, could be charged as conspirators.⁴³

C. Removing Civil Liability for Drivers Who Injure or Kill Protesters

From November 2016 to November 2017, seven states introduced legislation that would eliminate liability for a driver who unintentionally injures or kills a protestor interfering with traffic during an unpermitted demonstration. In three states these measures were defeated, while in four others they are still pending.⁴⁴ In his 2017 report, the UN Special Rapporteur on the rights to peaceful assembly and association noted that he “is dismayed by the blatant contempt for the importance of assembly rights illustrated by these bills, as well as the prioritization of motorists’ convenience over protesters’ right to life. Peaceful protests are a legitimate use of public space. The exercise of this right may not always be convenient, but it is nonetheless an essential component of any functioning democracy.”⁴⁵

D. Executive Orders and Emergency Powers: Restricting Protests

The recent repeated use of emergency powers by state governors in the context of protests in the United States has also raised concerns. Emergency powers may be used unnecessarily, for instance, or may not be sufficiently tailored to the circumstances. There is also the risk that the use of emergency powers around protests will become routine. In its Second Report on Human Rights Defenders, the IACHR reiterated that “emergency and resulting suspension of guarantees is for

⁴⁰ HUMAN RIGHTS DEFENDERS REPORT, *supra* note 1 at 53.

⁴¹ OK HB 1123; ICNL Protest Law Tracker, *supra* note 8.

⁴² AZ HB 1142; ICNL Protest Law Tracker, *supra* note 8.

⁴³ Alia Beard Rau, *Arizona bill on protests, riots and racketeering: What you need to know*, AZCENTRAL, Feb. 23, 2017, available at <https://www.azcentral.com/story/news/politics/legislature/2017/02/23/5-things-know-arizona-bill-arrest-protesters-riot/98302932/>

⁴⁴ ICNL Protest Law Tracker, *supra* note 8.

⁴⁵ UN Special Rapporteur Report, *supra* note 6, at para 33.

exceptional situations only” and applies only in time of war, public danger, or emergencies that threaten the security of the state.⁴⁶

In North Dakota, in February 2017 the state’s governor through an executive order ordered the mandatory evacuation of the Oceti Sakowin protest camp where opponents of the Dakota Access pipeline, which traversed indigenous peoples’ territory, had been camped for several months. The governor cited safety and environmental concerns, but many claimed that he used these safety concerns as a pretext to remove unwanted protesters.⁴⁷

In August 2017, in response to “civil unrest” surrounding the Unite the Right rally in Charlottesville that resulted in one death and several injuries Virginia governor Terry McAuliffe issued a state of emergency. While the violence in Charlottesville certainly constituted an extraordinary situation, concern has been expressed that the use of Emergency powers were not sufficiently tailored to the incident. Among other provisions, the state of emergency executive order allowed for the “evacuation of areas threatened or stricken by effects of the civil unrest” if a local governing body (anywhere in Virginia) determined that evacuation was deemed necessary to protect life or to facilitate emergency response. This included the “evacuation of all or part of the populace from such areas.”⁴⁸

In October 2017, Florida’s governor Rick Scott declared a state of emergency days in advance of a speech by white nationalist Richard Spencer at the University of Florida in Gainesville. Among other actions, the order activated the Florida National Guard, allowed for the closure of government buildings and facilities, and waived certain budget restrictions.⁴⁹ The declaration of this preemptive state of emergency raised concern among some observers that a new norm might be created legitimizing declaring states of emergency before any protest that could potentially lead to violence. This norm could chill the freedom to assemble peacefully by making demonstrations seem dangerous and giving state and local authorities increased legal ability to shut down protests.

Recommendations to the IACHR

We make the following recommendations to the IACHR:

- (1) ICNL acknowledges and congratulates the IACHR’s Special Rapporteur for the Freedom of Expression on his work to create principles on protecting the freedom of assembly. ICNL asks that in this work the Special Rapporteur ensures that he draws on international best practices, including the 2016 United Nations’ Joint Report of the Special Rapporteur

⁴⁶ HUMAN RIGHTS DEFENDERS REPORT, *supra* note 1 at 57

⁴⁷ ND Executive Order 2017-01; ICNL Protest Law Tracker, *supra* note 8.

⁴⁸ VA Executive Order 66; ICNL Protest Law Tracker, *supra* note 8.

⁴⁹ FL Executive Order 17-264; ICNL Protest Law Tracker, *supra* note 8.

on the Rights to Freedom of peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the proper management of assemblies.⁵⁰

- (2) Convene a meeting with states and civil society to facilitate the sharing of best practices in managing peaceful protests.

Recommendations to the United States

We make the following recommendations to the United States:

- (1) Train law enforcement officials and give them clear guidelines for managing protests in line with international best practices⁵¹ in a manner that respects and enables the right to protest.
- (2) Review and limit the transfer of military weapons from the U.S. government to state and local police forces. If such weapons are transferred, monitor and report on their use to police demonstrations.
- (3) Ensure that prosecutions of protesters who violate the law seek proportional penalties to the violation and do not chill the right to protest.
- (4) Provide for accountability of law enforcement and other officials who use excessive force when managing protests.
- (5) Reject proposed state legislation or amend existing state legislation that violates the right to peaceful assembly.
- (6) Review the use of state and local emergency powers to respond to disturbances surrounding protests. Ensure that the use of these powers is limited to only when necessary and that it is narrowly tailored to the needs of the situation.

⁵⁰ See, UN Special Rapporteurs Guidelines on Management of Assemblies, *supra* note 19.

⁵¹ *Id.*