

ARTICLE 19

# The “Right to Protest”: Background paper

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Report

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# Introduction

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We are living in the age of global protests. From “revolutions” across the Middle East and North Africa, to protests in Turkey against the privatisation of public space; from protests in Greece against austerity to protests in Cambodia against land grabbing or demonstrations in India for justice in rape cases.

Throughout history, protests have played a crucial role in overcoming severe repression and demanding democratic and accountable governments – such as the fight against colonialism, labour struggles and strikes, the civil rights movement, anti-apartheid and anti-communism movements, the fall of communism, women challenging patriarchy, anti-war and anti-capitalist mobilisations, protests against “stolen elections” – and often become a default political action of how society seeks to change social, political and economic systems. Protests in the first months of 2014 in Venezuela, Brazil, Mexico, Russia, Ukraine, Bosnia and Herzegovina and Taiwan show this trend is not slowing.

Protests are important in all societies as they provide individuals and groups with an effective opportunity to have a say in public life through means in addition to electoral processes. However, instead of viewing protests as a legitimate and necessary part of democratic society and an exercise that ensures good governance and accountability, states often treat protests as a threat; something that has to be controlled, discouraged or eliminated, both through the law and practice.

Protests do not necessarily take place in form of demonstrations or parades. In areas such as nuclear disarmament, environmental and animal protection, anti-war and anti-globalisation actions or rights of disadvantaged and discriminated groups, protestors engage in various forms of “direct” action or “civil disobedience” that may violate laws unrelated to the cause of the action (e.g. to protect property from damage or trespass). Such forms of protests are both potential benefit for society and great threat; while the approach of states mainly consists of addressing only the latter.

Moreover, expansion of digital technologies brought new opportunities and challenges to protests:

- *First*, digital technologies are used a **medium** in protests. They play an important role in enabling protests to take place in physical spaces as they help individuals and groups to effectively and quickly plan and organise gatherings, respond to certain events or document and report on them. Measures to limit the use of digital technologies for protest purposes are on the rise.
- *Second*, digital technologies can be used also as a **platform** of protests: protests no longer need to take place in the physical world – in public places, squares, roads or parks. Instead, technology makes it possible for people to “gather” in online spaces and engage in new forms of “virtual” protests. Calls are made to recognise that right to protest “online”, without actually specifying what this entails; scope of protection of such protests has yet to be defined. Moreover, cybercrime laws in many jurisdictions outlaw some forms of virtual protest akin to “direct action” without considering the impact of restrictions on freedom of expression or peaceful assembly.

At the same time, new opportunities for improving protection of human rights engaged in protests emerged recently; in particular:

- The UN Human Rights Council (HRC) has created a mandate on the rights to freedom of peaceful assembly and of association (Special Rapporteur on FOAA),<sup>1</sup> which has contributed through its annual thematic reports to the development of “soft law” in this field.
- In 2010-2014, the HRC has adopted multiple resolutions specifically addressing the protection of human rights in the context of peaceful protests;<sup>2</sup> and, in addition to the Special Rapporteur on FOAA, several other thematic and country mandate holders have highlighted the same in their reports.<sup>3</sup> These have played an important role in underlining the responsibilities of States in protecting the human rights of protestors and laid down the grounds for greater guidance on how to put that protection into practice.
- The HRC Resolution 25/38, adopted in March 2014, *inter alia*, requested the relevant special procedures to prepare guidelines for facilitating and protecting peaceful assemblies based on good practices; while also consulting with civil society and other stakeholders. It has been further suggested that the Human Rights Committee (HR Committee) should draft a dedicated general comment on Article 21 of the International Covenant on Civil and Political Rights (ICCPR) on protection of the right to peaceful assembly (it is not yet clear whether this will take place).
- At the regional level, the African Commission is considering to develop specific guidelines on freedom of association and peaceful assembly in Africa, following a dedicated report on the subject later in 2014.<sup>4</sup> We are also mindful on existing standards developed by the Organisation for Security and Cooperation in Europe – the Guidelines on Freedom of Peaceful Assembly (the OSCE Guidelines)<sup>5</sup> and ongoing initiatives of other regional human rights institutions.<sup>6</sup>

ARTICLE 19 has been dealing with protection of human rights in the context of protest at both national and international levels. ARTICLE 19’ offices in Mexico, Brazil, Bangladesh, and Tunisia have been grappling with the day-to-day reality of defending the rights of protestors in respective regions. At the UN, we have been advocating for strong resolutions related to protests; and we have been also supporting individual cases of protestors at national and regional courts.

In our experience, the efforts to improve protection of human rights in context of protests have not been uncontroversial.<sup>7</sup> We, therefore, believe that it is important for the civil society to join forces in influencing and supporting the forthcoming initiatives at the UN level, as well as to the ongoing regional processes, ensure that gaps in the protection are properly addressed and the highest possible standards adopted.

The aim of this background paper is to present our perspective on the subject; and to lay the ground work for possible elaboration of a set of principles, together with international experts and other partners, containing recommendations in this complex area. We are hoping that these recommendations would be later used in international, regional and international advocacy.

The background paper and draft Principles are intended to serve as the basis for the discussion at a meeting in London on 15-16 May 2014, bringing together international experts in the field of human rights, freedom of expression, media freedom and freedom of peaceful assembly. Further consultations will be organised based on the revised drafts following the meeting.

# Protection of human rights and protests

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## No international legal definition of “protest”

The term “protest” is not defined in international law, despite its frequent use in legal and non-legal settings.

We suggest that the term encompasses a variety of expressive conducts characterised by the individual or collective expression of oppositional or reactive views, values or interests through some manifested action.

“Protest” and “assembly” are not necessarily interchangeable. Protest, unlike assembly, implies in it an element of dissent, opposition, response or reaction to something. Unlike assembly, it is not entirely content neutral. It can also be individual as well as collective; it can be considered as political speech as well as collective expression of it.

As such, the term “protest” can refer to

- Various **forms** of collective expression, gatherings or assemblies, in public places (e.g. demonstrations, marches or public rallies) undertaken by individuals united by shared objectives,<sup>8</sup> and include verbal and non-verbal forms of expression (e.g. pamphlets distribution, performing music, dance or theatre, satire, graphics, posters or slogans). It also encompasses actions that may be characterised as “direct action” or “civil disobedience” (e.g. blockades, sit-ins, occupations or boycotts).
- Various **purposes** of common interest, for example participants may be standing in opposition to specific official policies or other ideas or beliefs, or they might be expressing a specific identity (e.g. gay pride parades) or drawing attention to the disadvantaged or marginalised position of some groups in society (e.g. Millions Women March);
- Targeting of various **audiences**, ranging from protests targeting government officials and institutions to those targeting the general public, private associations or corporations;
- Actions in various **places**, such as roads, squares and streets, parks, corporately regulated open spaces (e.g. pedestrian malls), spaces designated for a specific purpose (e.g. parliamentary precincts) and increasingly also virtually or “online.”
- Various levels of **organisation**, with some having formal coordinators, an organisational structure and pre-determined duration, and others being organic and non-hierarchical.

The term protest is also an emotive one. For many, it provokes thoughts of social justice movements and the positive exercise of rights. For others, in particular repressive governments and conservative forces in society, the term is associated with disorder, chaos, unrest and challenges or threats to authority. The language used to describe the exercise of fundamental rights and the emotions evoked have ramifications for how conduct is regulated in law and practice, and perceived by society at large.

## “Peaceful protest”

International protection of human rights continues to apply during protests whether they are characterised as peaceful or non-peaceful.

However, the term “peaceful protest” is frequently used to describe protests that are not violent, mirroring the treaty language determining the scope of the right to freedom of *peaceful* assembly. We note that in existing framework, the definition of “peaceful assembly” has been elaborated broadly; for example, the jurisprudence of the European Court for Human Rights (ECtHR) indicates that only assemblies in which the participants or organisers have “violent intentions” are excluded from protection.<sup>9</sup> At the same time, sporadic or isolated incidents of violence during an otherwise peaceful protest should not deprive individuals of their rights to freedom of peaceful assembly or other human rights.

### **Protection of human rights engaged in protests**

International human rights instruments do not define any “right to protest.” It has been widely acknowledged, however, that instead of a distinct “right,” engaging in a protest encompasses the exercise of a variety of interlinked and interdependent human rights, in particular:

- the right to freedom of expression;
- the right to freedom of peaceful assembly and association; and
- the right to participate in the conduct of political affairs.

It might also involve the right to strike (in context of labour relations); and the right to culture. Additionally, engaging in protest involves the respect and protection of other rights, such as the rights to life, privacy, liberty and security of a person, or freedom from discrimination.

Protection of these rights – guaranteed in international and regional treaties<sup>10</sup> - is not provided in absolute terms; each of them may be subject to narrowly tailored limitations in strict compliance with the limited provisions of respective articles.<sup>11</sup> Despite these guarantees, at the *international level*, more precise interpretative clarification of state obligations is needed for two key reasons:

- *First*, determination of precise contours of what constitutes an acceptable limit on **the rights to peaceful assembly and association** is somewhat lacking; clear and authoritative statements in this respect are fragmented and underrepresented in comparison to other rights. For example, HR Committee developed two general comments on the right to freedom of expression (Article 19) and one general comment on the right to political participation (Article 25); but none on Article 21 and 22; it also has a relatively little jurisprudence in relation to either right.

Regional jurisprudence is also limited. For example, the European Court of Human Rights (ECtHR) has in a number of cases found it “unnecessary” to assess complaints on protection of the right to peaceful assembly (under Article 11 of the European Convention) where a violation of guarantees for the right to freedom of expression (Article 10) has already been decided.<sup>12</sup> There have been only few decisions at the Inter-American Court on Human Rights and the African Court on Human and People’s Rights in this area (a landmark case, *WOZA vs Zimbabwe* has been recently ruled admissible by the African Human Rights Commission<sup>13</sup>).

- *Second*, it is necessary to clarify some aspects of protection of other **human rights engaged in protests** that are protected at all times, irrespective of assemblies, but may require heightened protection during protests, given the particular vulnerability of participants at this time.

We believe that this gap in interpretative framework in part explains a divergence in approaches taken at the national level to protests and the almost routine violations that we see. It has been widely documented that states abuse the ability to impose “permissible” restrictions as a pretext for introducing illegitimate or disproportionate restrictions.<sup>14</sup>

As already mentioned above, there are new opportunities to address this gap, including the “guidelines on facilitating and protecting peaceful assemblies” (mandated by the Resolution 25/38) that should be developed by two mandate holders and, possibly, also a general comment on Article 21 of the ICCPR. We make three observations in respect to our understanding of protests here:

- We fully support the initiative to clarify the state obligations under **the right to peaceful assembly** both through the special guidelines and through a dedicated general comment for the reasons already outlined.
- At the same time, the scope of the guidelines is not clear. We believe the scope should be broad and go beyond “time, place and manner” type of restrictions and rules for law enforcement on policing of assemblies. The guidelines must contain complex recommendations for **protection of human rights engaged in protests**, in particular the rights to freedom of expression, life, liberty and security of a person, freedom from discrimination and privacy. Latter is particularly relevant in the context of digital technologies. In this respect, we appreciate a comprehensive nature of the OSCE Guidelines and we propose to rely on them when considering these issues; while also identifying possible gaps and possible higher standards from other regions and countries.
- We also propose developing recommendations for **other forms of protest** that are not captured in the concept of “peaceful assembly,” in particular virtual protests and protests in a form of civil disobedience.

We examine each of these areas separately in the following sections.

# Protests as assemblies

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Regulation of assemblies is complex and includes a combination of specific and general criminal, administrative and civil laws, with considerable discretion on the part of authorities exercising law enforcement duties. Powers to control assemblies can be taken as preventative measures, during the protest itself, or afterwards. They may include unnecessary authorisation regimes or excessive notification requirements; prescription on the time, place and manner of protest; intelligence gathering and pervasive surveillance; dispersal and the use of force; stop and search; arrest; seizure and confiscation of property; criminal prosecution, administrative charges or civil remedies including restrictions on future conduct.

The aim of this section is to highlight issues where the existing protection of peaceful assembly could be improved at a level of principle. Examples are used for illustrative purposes only.

## ***Advance authorisation or notice requirements imposed on protestors***

Many states require organisers to seek authorisation before assemblies take place. For example, under recently enacted Egyptian, Turkish or Ugandan laws,<sup>15</sup> protestors must obtain permission within a designated period before the protest is scheduled to take place in order for it to be lawful. It is well established that such authorisation regimes are not compatible with international standards on freedom of assembly.

In other countries, participants are required to provide "notice" to the authorities of an assembly, either for all or in specific cases (e.g., in the UK, notification is only required for marches and parades, and not for static assemblies).<sup>16</sup>

However, in our experience, "notification" requirements in many countries operate as *de facto* authorisation regimes, with significant discretion for the State to prescribe the time, place or manner of the protest. In others, the level of information required and the form in which it must be submitted are excessively bureaucratic and unnecessary. The discretion given to authorities by these processes can often be abused to discriminate against organisers based on their identity.

We are mindful that several international bodies stated that prior notifications procedures are permissible only to the extent that they allow states to plan to adequately facilitate the assembly.<sup>17</sup> The Special Rapporteur on FOAA has stressed that states should not impose prior-authorisation requirements, but should at most require only notice of assemblies.<sup>18</sup> He also stated that notification procedure should be subject to a proportionality assessment, should not be unduly bureaucratic, and require a maximum of 48 hours prior to the day the assembly is planned to take place (in comparison, the OSCE Guidelines do not recommend any such time limit).<sup>19</sup>

At the same time, it has been recommended that spontaneous assemblies should be exempt from prior-notification requirements<sup>20</sup> and absence of a notification should not be the basis for dispersing a peaceful assembly.<sup>21</sup> Here, we believe that arguments could be made that "notification regimes" should be an exceptional measure, limited to very narrow and exceptional circumstances.

### ***Bans on protests***

Various bans on protests have been applied by states in recent years either in law or practice:

- Complete bans on all protests in the country for an indefinite period of time (e.g. Sierra Leone or Tunisia);<sup>22</sup>
- Complete bans on protests in specific areas due to their political nature (e.g. the UK<sup>23</sup> or Egypt<sup>24</sup>);
- Bans on protests in public areas due to political events;<sup>25</sup>
- Bans on protesting at certain time, e.g. after daylight hours (e.g. Bahrain)<sup>26</sup>;
- Restrictions on public places that are privately owned or managed but which are traditionally used by the public (e.g. parks, e.g. the UK or US).<sup>27</sup>

Some of these bans could fall under time, place and manner that can be legitimately introduced, in particular public order, health or rights of others. However, international standards recognise that there should be a presumption that using public spaces for protests purposes is as legitimate (if not more so) as other uses of the same spaces for "reasonable period." The ECtHR recognised that "certain degree of tolerance" towards disruption to ordinary life caused by demonstrations "if the freedom of assembly is not to be deprived of all substance."<sup>28</sup> Similarly, the OAS Special Rapporteur for Freedom of Expression stated that disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression.<sup>29</sup>

Protracted nature of many contemporary protests (e.g. Gezi Park in Turkey, Euromaidan in Ukraine, Tahrir Square in Egypt or Occupy Movement in various states) question how permissible time restrictions should be applied; mindful that the authorities in respected countries also relied on such legislation when curtailing the protests.

Moreover, under available standards, protection is unlikely to be granted to assemblies held in privately owned places against the wishes of an owner, or if alternative ways of expressing the views are available outside of private premises.<sup>30</sup> It has been recognised that "the state may, on occasion, have a positive obligation to ensure access to privately owned places for the purposes of assembly or expression;" however, it is not clear to what extent. We propose to address this through the definition of "quasi-private places."

### ***Discriminatory content restrictions on protests***

Dissenting groups, especially those expressing minority identities or controversial viewpoints, often face particular obstacles. Administrative regimes are sometimes applied to discriminate against these groups and obstruct or frustrate their protests.

Assemblies to promote the rights of lesbian, gay, bisexual and transgender (LGBT) persons have been specifically targeted. In Russia,<sup>31</sup> the adoption of a federal prohibition on propaganda of "non-traditional same sex relations" has supplemented existing tools available to the State to discriminate against LGBT assemblies. Similar prohibitions have been adopted in recently Nigeria and Uganda, and have been considered in Ukraine,<sup>32</sup> and Lithuania,<sup>33</sup> and have been adopted and then repealed in Moldova.<sup>34</sup>

Therefore, we believe it is necessary to reiterate that majoritarian prejudices and predisposed biases cannot justify limitations on the freedom of peaceful assembly or free expression rights of minority groups or their supporters;<sup>35</sup> guidelines could also explicitly specify the instances that can never be used to exclude the protection.

### ***Incitement***

Assemblies organised around extremist views, ideas and beliefs that advocate for the violation of the rights minorities and vulnerable or disadvantaged groups have been an issue of concern in several countries recently, e.g. Myanmar, Bangladesh, Hungary or Egypt. They are often supported by extremist associations, including political parties, that engage in “hate speech” through other activities besides protests.

States are required by international law to prohibit the advocacy of racial, national or religious hatred that constitutes incitement to hostility, violence or discrimination (ICCPR, Article 20 para 2). Elaboration on what this requires from States has been recently comprehensively set out in the *UN Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*. This plan provides a detailed and comprehensive roadmap for tackling the most serious forms of intolerance and hatred, addressing the roles of State and non-State actors.<sup>36</sup> The Rabat “six part test” for incitement (originally developed by ARTICLE 19), also provides framework for assessing individual incitement cases.<sup>37</sup>

The recommendations of the Rabat Plan and its test must be considered in the context of protests, overall and in respect to specific issues (e.g. counter-demonstration) and elaborate on its and specify application of its test in this area.

### ***Use of force***

Deployment of excessive force against protestors by law enforcement and/or military is an ongoing trend and an issue of serious concern, raised also recently by special mandate holders.<sup>38</sup> The types of force applied vary from country to country – from the use of batons, water cannons, tear gas, to lethal arms. We are concerned that in some countries, legislative basis for such use of force have been introduced recently (Egypt where the legislation confers an extremely broad mandate for police to fire on “crowds” of more than five people<sup>39</sup>); whereas in others it has been proven the police have exceeded their legislative mandate in resorting to the use of force (Cambodia,<sup>40</sup> Mexico,<sup>41</sup> Venezuela,<sup>42</sup> Turkey<sup>43</sup> or Ukraine<sup>44</sup>). Impunity for abuses of the law by enforcement authorities when resorting to force, and violations of the rights of protestors or bystanders in this context, is an increasing problem.

These practices are obviously in violation of existing international standards in this area as well as existing guidelines - in particular the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles)<sup>45</sup> and the UN Code of Conduct for Law Enforcement Officials.<sup>46</sup> Given their widespread prevalence of these practices, we believe it is necessary to reiterate them and closely examine the structural problems leading to their violations.

Moreover, we also believe that stricter guidance should be elaborated for some containment tactics (also known as “kettling”, when the law enforcement does not seek to disperse protestors but rather contain them for an indefinite period, often without access to food and sanitation facilities). The incidents of kettling in UK have been criticized by the UN Special Rapporteur, and also subject of review at the ECtHR, although on the facts of that case it was found to be a proportionate measure.<sup>47</sup>

### ***Violence against women in context of protests***

Women have been specifically targeted for their participation in protests recently. For example, in Egypt, armed forces and riot police have a record of violence against women during their protests; women protestors have received brutal treatment from these security forces, including beatings, threats of sexual abuse, and forced virginity test.<sup>48</sup> Similar cases have been recorded in Bahrain through 2011.<sup>49</sup>

In the light of existing international standards states, in particular the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>50</sup> more guidance is needed on what measures required to secure protection of women in context of protests is needed.

### ***Border checks***

Preventing individuals from entering the country is a popular measure to prevent protest and assemblies before international events, summits, sport events or high-level political meetings that attract people from around the world to take part in demonstrations. For example, restrictions on border crossings were applied before the World Bank and IMF summit in 2001 in Prague, G8 Summit in Italy in 2001 and 2009, and in Germany in 2007, COP15 conference in Denmark in 2009, NATO summit in Lisbon in 2009 or the Winter Olympics in Russia in 2014.<sup>51</sup>

Although States have broad discretion to regulate their borders, the impact of these measures on the exercise of fundamental rights should be considered. In a case concerning the expulsion of the applicant (a German citizen and a member of the European Parliament) from France and a prohibition to re-enter due to her participation in a demonstration in French Polynesia, the ECtHR held that the lack of the country citizenship did not authorise the State to restrict her exercise of the right to freedom of expression.<sup>52</sup>

### ***Surveillance powers and protests***

Impact of surveillance techniques employed by law enforcement authorities in protests has not yet been comprehensively assessed, although it has been raised in some countries, for example the UK.<sup>53</sup>

It has been also reported that surveillance techniques can result in large scale preventive arrests under vague references to internal security and public order (e.g. the UN COP15 Conference in Copenhagen, Denmark<sup>54</sup> or Brussels).<sup>55</sup> Preventative arrests frequently involve lengthy periods of detention, and where charges are imposed, individuals may be pressured into accepting administrative or criminal responsibility to avoid lengthy legal proceedings.

It has been acknowledged that such tactics are problematic in two respects:

- They have "a chilling effect" on protestors who fear to hold further protests;<sup>56</sup> or
- Represent a "function creep," especially when police or intelligence agencies have used their powers under anti-terrorism legislation on protestors.<sup>57</sup>

In this respect, we propose both restrict the possibility of the use of these techniques against peaceful protestors and develop recommendations on protection of privacy of protestors more broadly.

### ***Sanctions for participation in protests***

Authorities of several countries have recently resorted to arbitrary arrests and prosecutions for merely participating in unauthorised assemblies, assemblies that did not meet certain conditions placed on them, or on spurious charges – e.g. Russia, China, Turkey, Brazil, Algeria, Cambodia or Azerbaijan.<sup>58</sup> These arrests, methods of questioning and interrogation, subsequent legal proceedings, and conditions of detention raise a number of separate human rights concerns.

Several countries have also significantly increased the penalties for people convicted under criminal or public order laws. These range from hefty fines that are larger than the average monthly wage to prison sentences (for example Azerbaijan,<sup>59</sup> Myanmar<sup>60</sup> or Egypt<sup>61</sup>) or the laws allow for the protest organizers to be held liable for the unlawful conduct of other people who attend the protests (e.g. UK or Bahrain). In Thailand, authorities even threatened to use the death penalty for those protestors taking part in the shutdown of Bangkok on 13 January 2014.<sup>62</sup>

In many cases, such penalties are either unjustified or fail to meet the requirement of necessity and proportionality. For example, the OAS Special Rapporteur on freedom of expression repeatedly raised concerns about the existence of criminal provisions that make criminal offenses out of the mere participation in public demonstrations and intimidating effect this has on participatory expression.<sup>63</sup>

### ***Civil law suits***

Civil law actions or suits are increasingly used as a mechanism to deter and obstruct protest through private law. For example, methods of "Strategic Lawsuits Against Public Participation" (SLAPPs) have been used by public authorities and by private parties (such as corporations or real estate developers) against protestors who oppose them, especially environmental activists. Such suits are based on civil claims such as nuisance, trespass, interference with contract and/or economic advantage, usually to intimidate activists with claims for large damages, or for the purpose of seeking an injunction.

For example, in Australia, in 2004, 20 environmental activists and organisations were sued by the Tasmanian logging company Gunns Ltd., that claimed the protestors' actions cause damages to their business and reputation in amount of AU\$6.9 million.<sup>64</sup> In the UK, in 2013, the energy company EDF sought more than £5m in damages from a group of 20 activists who occupied one of its power stations for a week.<sup>65</sup>

Although such suits are often unsuccessful or abandoned, they require a substantial investment of money, time, and resources to defend against them. As such, they can have a chilling effect not only on those who are targeted by them but also others who, in fear of being a target of similar actions in the future, might be deterred from participating in protests or other actions.

International or regional bodies have not yet addressed this issue, but several states in the USA and Canada passed laws prohibiting this form of suits in general, which provides some protection to protestors.

# Protests and the new media environment

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Media play a crucial role in protests: the ability of the media to freely report on protests is key to ensuring that information about protests reach the public, who have a right to receive that information. It is also an important mechanism for promoting the accountability of law enforcement agencies and other actors for their conduct during protests.<sup>66</sup>

Given the importance of the media, specific recommendations have been developed to enable the media and journalists carry out their work, access protests and enable information flows. In particular, law enforcement is obliged to refrain from obstructing the work of the media during protests, refrain from attempts to confiscate, damage or destroy their equipment or silence them in response of their coverage.<sup>67</sup> In order to benefit from this protection, journalists should identify themselves, refrain from becoming involved and report objectively on the events.<sup>68</sup> Importantly, it has been also suggested that accreditation schemes are necessary only in exceptional circumstances, when required by available resources.<sup>69</sup>

Over the last two decades, however, digital technologies have transformed the way in which people communicate with each other; and these changes have had a profound impact on protests:

- Digital technologies (especially mobile phones with photography equipment, the Internet and social media), are now a common and preferred medium for **organising protests**,<sup>70</sup> and help protestors to directly mobilize their supporters or to expose and validate their cause;
- This also means that a broader range of **actors** is engaged in “journalistic” activity within protests. Protestors can now directly bring external attention to their actions, both within and outside their country (this is especially important in countries where the legacy media are heavily controlled, e.g. Turkey<sup>71</sup>, Ukraine,<sup>72</sup> Belarus<sup>73</sup> or Egypt<sup>74</sup>). Increasingly, the content of the mainstream media heavily relies on content created by protestors.<sup>75</sup> In some cases, the ability to communicate the information about protests via the Internet protected dissident groups against retaliation from governments (e.g. Cuba).<sup>76</sup> The importance of digital technologies in protests has been widely acknowledged (e.g. HRC<sup>77</sup> and the UN Special Rapporteur on FOE<sup>78</sup>).

Digital developments also re-defined a notion of who is a journalist. Journalism is no longer seen as a “profession” but as a “function.”<sup>79</sup> We also recall that under international law, it is well established that mandatory licensing or registration of journalists is incompatible with the right to freedom of expression.<sup>80</sup>

New media environment has also brought new possibilities of censorship as well as new challenges in protection of actors involved. We believe that in former, new recommendations should be developed; while in latter, existing recommendation might need to be adapted.

## Censorship

### ***Restriction on the use of the digital technology in relation to protests***

Attempts to curtail the use of digital technologies within protests have been on increase (both re organising and reporting purposes); these include but are not limited to:

- Shut down of the Internet – the so called “kill switch” - or to limit public access to the Internet during protests (e.g. Egypt,<sup>81</sup> Pakistan<sup>82</sup> or Syria<sup>83</sup>) or suspending some digital technology services (e.g. Bahrain<sup>84</sup>);
- Filtering or blocking certain websites, portals or online tools used for reporting on protests (e.g. UK<sup>85</sup> or Turkey<sup>86</sup>);
- Prohibition of the use of the social media for protest activities (e.g. Brazil<sup>87</sup>);
- Removal of content related to protest activities (e.g. Belarus<sup>88</sup>);
- Attempts to introduce an obligation for private companies to comply with such measures (e.g. US<sup>89</sup>);
- Intermediary liability on service providers or telecommunication carriers for issues related to protest (e.g. India<sup>90</sup>);
- Instances of private censorship protest activities through removal of content or banning certain applications.<sup>91</sup>

We believe that authoritative guidance regarding permissibility of these restrictions in context of protests is needed, in particularly re the public order restrictions.

### ***Censorship of the legacy media in relation to protests***

Legacy media are not immune to censorship in relation to protest, either. For example, in Venezuela<sup>92</sup> recently, a private television was taken off the air and privately owned media have been targeted in retaliation.

Additionally, the use of various "jamming" mechanisms (deliberate intrusion of broadcaster's satellite signals), a practice thought to be confined to the cold war having disappeared with the fall of the Berlin Wall, have been revived, in particular in response to coverage about protests. For example, satellite jamming has been used in Bahrain (Lualua TV), Iran (BBC World Service), China (Voice of America, Deutsche Welle) and Middle East (Al Jazeera).<sup>93</sup>

States resorting to jamming foreign broadcasters justify it on the ground of national sovereignty and maintain that their aim is to prevent unwanted foreign broadcasts “propaganda” from reaching their citizens. They also claim that foreign-based broadcasters can be prevented from transmitting their signals into their national territories since their laws require broadcasters to obtain a licence from a public body. If broadcasters operate without such license, they are violating the law.

## **Independent monitoring, “journalism” and protection in the digital age**

### ***Protection of “journalists”***

Despite ongoing initiatives to improve protection, there has been an increase in the number of attacks against journalists during coverage of protests, including verbal and physical attacks, confiscation or destruction of equipment, as well as killings around the world. Such cases have been reported in Angola, Belarus, Egypt, Georgia, Iraq, Kazakhstan, Libya, Malawi, Malaysia, Maldives, Mexico, Russian Federation, Spain, Sri Lanka, Sudan, Syrian Arab Republic, Tunisia, Yemen, Ukraine and Brazil.<sup>94</sup> Many of these journalists were deliberately targeted despite being clearly distinguished from protestors.

In several countries, they have also been arrested, prosecuted and harassed in relation to covering protests or denied access to protests, most recently in Belarus,<sup>95</sup> Angola,<sup>96</sup> Uganda,<sup>97</sup> Chile,<sup>98</sup> Venezuela,<sup>99</sup> Russia<sup>100</sup> or Turkey.<sup>101</sup>

This is in striking violations of international law, under which states have both a duty to prevent attacks and a duty to tackle impunity for them through independent, speedy and effective investigation. In this respect, we highlight *the UN Plan of Action on the Safety of Journalists and the Issue of Impunity*<sup>102</sup> and the 2012 Joint Declaration on Crimes Against Freedom of Expression<sup>103</sup> that provide guidelines as for the measures of protection of journalists in general. Their recommendations could be applied in relation to violence against journalists during protests and subsequent impunity. Here, we also note the expansion of regional jurisprudence on impunity for violence against journalists in relation to protests specifically (e.g. the recent decision of the Inter-American Court of Human Rights, concerning the 1996 attack on a video journalist who was attempting to film a demonstration.)<sup>104</sup>

### ***Protection of others engaged in reporting***

Ability of protestors to carry out functions traditionally assumed by professional journalists blurs boundaries between who is a journalists and who is a protestor. To put it simply, with digital phone and access to the Internet, everyone can be a journalist and a protestor at the same time.

In our experience, two problems should be considered here:

- This ability has rendered many social communicators **vulnerable to attacks** due to the reporting activities they carry out. For example, in Mexico, attacks against “citizen journalists” documenting protests (those not affiliated with professional media outlets) have been increasing.<sup>105</sup> However, it is also not clear how protection mechanisms should respond to these threats.

In any case, international standards regarding protection and the obligation to carry out effective investigation into attacks must apply to other social communicators when they are targeted. States must ensure that measures aimed at protecting journalists are not exclusively restricted to journalists affiliated with legacy media. This also means that law enforcement must neither inhibit the work of these individuals nor damage and/or seize their equipment.

- Secondly, specific measures enabling monitoring of protests must be extended to social communicators. This means, for example, that accreditation schemes (if needed) must provide that all applicants who meet minimum requirements should be allowed to take part in them; while conditions must not be based on considerations of professional association and degree.

# Protests as civil disobedience

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## Concept of civil disobedience

As noted above, protests encompass a variety of actions, not limited to “assemblies.” They can also take form of “civil disobedience” or “direct action” when protestors collectively engage in acts that conscientiously and deliberately violate the law. Such actions usually aim at changing objectionable policies and practices of governments or corporations whose actions have serious public consequences.<sup>106</sup>

Violation of the law is not necessary related to the aim of the protest: instead, the purpose is usually to bring attention to a particular injustice and to create some form of publicity for the underlying cause. Protestors hope that their conduct will make a dramatic appeal to the conscience of the public, affect public awareness of a particular issue and/or will motivate others to demand change.

The basis for civil disobedience can be linked to the Preamble of the UDHR, which states “if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” It has been noted that the philosophy of civil disobedience

[E]mbodies the recognition that obligations beyond those of the law might compel law breaking, but the doctrine steers that impulse toward a tightly-cabined form of illegal protest nevertheless consistent with respect for the rule of law. As such, civil disobedience serves as a firebreak between legal protest and rebellion, while simultaneously providing a safety valve through which the profoundly disaffected can vent dissent without resorting to more extreme means.<sup>107</sup>

Examples of this form of protests are well documented throughout history and some of the most important advancements in human rights protection have been a product of such action; e.g. the anti-slavery movement, the suffragette movement for female enfranchisement, the fight against colonial oppression, civil rights movement to end racial segregation or the organised labour movement. Protest through civil disobedience continues to be a widely practiced form of political expression, with the most prominent protests being anti-war and anti-nuclear protests (e.g. the Ploughshare movement), anti-globalisation protests (e.g. Occupy), protests of environmental activists (e.g. Greenpeace Rainbow Warrior or Sea Shepherd) or various political protests (e.g. FEMEN or Pussy Riot).

In general, there are two types of protests in form of civil disobedience:

- **Direct**, involving intentional violations of a specific law that, in and of itself, is challenged as unjust; for example the violation of slavery or racial segregation laws, the violation of marijuana possession laws, or the violation of so-called “homosexual propaganda” laws.
- **Indirect**, involving the violation of a law which is not itself the object of protest; instead, protestors seeks to mobilize public opinion, typically through symbolic action (for example trespassing on government facility or private property, blocking access to buildings, obstruction of passage, or engaging in disorderly conduct). In these cases, protestors do not contest the validity of laws under which they are charged but believe their acts are

necessary as a means to pressure officials to change a different policy, legislation or practice.

## Human rights standards and civil disobedience

Although regional bodies and some national courts have recognised the expressive dimension of such protests,<sup>108</sup> courts in general adopt negative approaches to them and refuse to recognise human rights dimension in them. Three main arguments are used here:

- The **rule of law**: there can be no legal justification for breaking the law whether such a breach is based on deep moral conviction or insouciance. Civil disobedience would easily lead to lawlessness or would allow the judiciary to avoid application of laws or apply their personal moral views (in terms of "ends justify their means"), with preferences to particular causes;
- **Democratic governance**: protection to such action would negate the values of democracy as it would allow individuals to impose their values through intimidation and obstruction rather than through political means;
- **Harassment and intimidation of individuals**: this type of protests often target private companies (e.g. multinational companies or polluters) or individuals (e.g. those seeking abortion services) and can result in coercion or violation of their rights.

On the other hand, it should be recognised that:

- Protests in form of civil disobedience include the **exercise of human rights**, especially freedom of expression, and allow individuals to engage in political processes which they otherwise have only limited possibility to influence effectively (e.g. through elections);
- This form of protest can contribute to **pluralism and diversity**: it enables voicing minority views (i.g. those discriminated against or marginalised or those most frustrated by the workings of a political system), help to reduce the risks of conformity and depriving the public of information that it needs to have.<sup>109</sup> They also allow individuals to vent their concerns without resorting to more extreme means. As such, it is one of features of democracy that balances dissent with order.<sup>110</sup>
- Protestors are not acting with malicious **motivations**; instead, they are seeking objectives larger than their own immediate self-interests. In comparison to "ordinary" criminals, they are not denying the fundamental social and constitutional order, they are trying to reform and it.
- Although the protestors can use other **alternatives** to raise their concerns and correct the alleged wrongs, those often do not offer a reasonable hope of solution or real **remedies**. If there is no defence for unjust laws or practices, it is difficult to deny that civil disobedience should not be utilised as a legitimate form of protests.

International and regional human rights bodies and in most cases national courts have not yet addressed this form of protest at the level of legal principles:

- The **international and regional jurisprudence** is limited to few cases of the ECtHR in which the ECtHR recognised that protests through disobedience fall under the scope of the

respective articles of the European Convention (Articles 10 and 11).<sup>111</sup> Still, it allows states to apply fairly wide margins of appreciation in such cases and States are not typically required to demonstrate the less restrictive measures than those taken against particular protests.

- In some countries, **necessity defence** has been invoked in civil disobedience cases. Such defence is based on the premise that it would be unjust to penalise someone for violating the law when the action produced a greater good or prevented a greater harm. E.g., the US courts allowed this defence in direct civic disobedience.<sup>112</sup> However, it is not allowed in indirect cases: courts tend to see that the harm protestors are trying to prevent is speculative or uncertain; or is not immediate (defendants have ample time and other means at their disposal), even if such efforts might well be futile. Courts also typically find that there is a lack of proof that protestors' conduct has causal effect between the protest action and the harm being diverted: these acts are not likely to abate the protested harms by effecting a policy reversal. Some courts have displayed sympathy towards protestors, though, but this is the exception, not the rule, e.g. in a case of trespassing in protest against nuclear proliferation, the US court found this was the only effective option:

There isn't another thing these two people can do. A letter to Congress has been sent and has not accomplished anything. The Congress voted for nuclear freeze in one vote and voted for the arms race in another. There are some who say that there is absolutely no prospect of the administration or the Congress to bring this matter to a successful conclusion and that the track record proves it and that the only possibility, however, remote, the only possibility of survival lies in protest. If people believe that, who can say they are wrong?<sup>113</sup>

### Assessing civil disobedience under the three part test

We are not suggesting that international standards "legitimise" this form of protests. By definition, civil disobedience is an action not based on the law but on moral and political stances. It would be conceptually problematic for the law to sufficiently and comprehensively define the conditions of its own violation, without ceasing to be the law. Moreover, by the nature of the action, such protestors are aware of the consequences of their actions and also, mostly accept the *risk* of punishment.

However, since civil disobedience involves the exercise of human rights, we believe that all restrictions on such protests must be reviewed under the three-part test of restrictions. Since in most cases, restrictions will be pursuing some legitimate aim (public order or rights of the others); the focus should be on the necessity and proportionality of sanctions. We propose that the following aspects should be considered here:<sup>114</sup>

- Allow **public interest considerations** in prosecutorial discretion in these cases. This might not be currently possible in some civil law countries that formally require law enforcement to pursue all cases that were reported to them or of which they are aware.
- Allow specific **mitigating circumstances** for judiciary or adjudicatory authorities when imposing sanctions.

In both of these instances, authorities could consider the factors such as:

- **Motivation:** discretion could be granted to those civil disobedience action that relate to a recognised international norm (e.g. human rights protection, objecting against to trade treaty that goes against human rights, violation of trade treaty, the law of the seas) or value and are motivated by deeply held social and moral belief in the injustice of law and not a personal gain.
- **Non-violence:** this would exclude civil disobedience protests that involve serious threats against individuals exercising their human rights (e.g. harassment of those seeking or providing abortion services) and destruction of property. However, there is little threat to public order in cases of civil disobedience protest that take place non-violently, or when protestors remained peaceful given the reasonably foreseeable consequences of their conduct.
- **Form of the protest action:** here, considerations could be made for protests that were of symbolic nature and caused relatively small disruption as compared to those that have significantly disruptive impact upon the activity in question. An example of the ECtHR case, *G v. Germany*, can illustrate this point: protestors organised a sit-in that blocked the road to a US Army barracks in a protest against nuclear weapons for only 12 minutes in every hour, but ignored orders to leave the road and were arrested and convicted of the offence of coercion by force or threats.<sup>115</sup> Here, we also recall that standards already recognise that protests are inherently disruptive and certain degree of tolerance is expected.<sup>116</sup>
- **Actual harm** of significantly disruptive protest action: here, authorities could consider the harm in context of the type of the entity targeted (e.g. governmental institutions or large for-profit commercial enterprise, such as multinational oil company), and resources of such entity. For example, a whaling fleet of a large marine company (as compared to an individual fisherman) or military base (as compared to small animal laboratory) have at their disposal resources to contain protestors and impact on their activities by protestors might be relatively minimal in comparison to their overall operations.

Another relevant issue here could be whether protests disrupted only the activity complained of, or whether they have a wider disruptive impact on the public at large or sections of it (e.g. preventing delivery of essential services).

**Proportionality of sanctions:** based on the above assessment, judiciary and administrative authorities should apply lenience in punishment. It should be also considered whether strict application of criminal offences is an appropriate and proportionate form of restrictions against protestors.

## Protesting online

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Protests are no longer limited to assemblies and gatherings in physical spaces but also are increasingly taking place, in whole or in part, “online.” In comparison to the use of digital technology as a medium in protests, the Internet is used as a **venue or platform of protests**.

As already noted, calls have been made to recognise and protect the right to freedom of assembly and association online, without actual elaboration of what such online protests would entail, e.g.

- The Special Rapporteur on FOAA called on states “to recognize that the rights to freedom of peaceful assembly and of association can be exercised through new technologies, including through the Internet.”<sup>117</sup>
- The UN Special Rapporteur on FOE, in relation to an on-going crackdown against Tibetan minorities by China, recommended that restrictions should not be placed on the Internet or mobile messaging to disrupt collective calls by the Tibetan Buddhist community for greater respect for their rights.<sup>118</sup>
- The OAS Special Rapporteur on FOE raised concerns about “disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly.”<sup>119</sup>
- In her speech in January 2010, Hilary Clinton stressed out that “the Internet is a network that magnifies the power and potential of all others... This freedom is no longer defined solely by whether citizens can go into the town square and criticize their government... Cyber space, after all, is the public square of the 21st century.”<sup>120</sup>

We suggest that two types of online protest can be distinguished, each of them requiring different considerations:

- **Virtual protests** that involve a simultaneous use of social media and other web platforms to engage in collective action, for example the “black out” protests against SOPA and PIPA;
- **“Hactivism”** or collective action of technologically-skilled individuals (“hactivists”) through the use of digital technologies to protest without actually gathering in person. Various techniques can be distinguished here, some of which could fall under virtual protest category above, but most of them are considered a form of “electronic” civil disobedience due to related violation of the law.

We believe that international law allows for consideration of these actions as forms of freedom of expression and assembly. We also recall that the object and purpose of international human rights law is often understood as the protection of individual and collective human rights. This focus has encouraged an evolving interpretation of the provisions of international human rights instruments so as to reflect the developments in society over time. The ICCPR and other international and regional human rights treaties have been described as “living instruments” that must be interpreted “in the light of present day conditions”, rather than being viewed as contracts with concrete terms defined by the norms that were prevailing at the moment of their drafting or ratification.<sup>121</sup> Their interpretation should “reflect the increasingly high standard being required in the area of the protection of human rights, thus

necessitating greater firmness in assessing breaches of the fundamental values of democratic societies.<sup>122</sup> This should apply to virtual protests.

## Virtual protests

We believe that these forms of a collective action should be considered an **online equivalent to physical space protests**. It is assumed that if they were carried out without a use of digital technology and in physical space, they would be a legitimate exercise of individuals' right to freedom of expression and assembly as well as a genuine form of protests.

International standards give protection to a wide variety of ways of collective action on the Internet, although in terms of the peaceful assembly, further elaboration would be needed:

- **Definitions of assemblies** would have to be expanded to consider the virtual protests as such interpretation might not always be automatic. Some national legislations define assembly as public place that is "not a building or structure;" e.g. in the UK, assembly is "a place which is wholly or partly open to the air;"<sup>123</sup> in the US, the Supreme Court rejected an argument that computer communication resembled town meetings in the broad sharing<sup>124</sup> and rejected an argument that the Internet constituted "a traditional public forum."<sup>125</sup>

However, we also note that understanding of "assembly" in existing standard, allows for such expanded definition, e.g. both the OSCE Guidelines and the 2012 Report of the Special Rapporteur on FOAA state that "the right to freedom of peaceful assembly protects any intentional and temporary presence of a number of individuals in a private or public space for a common expressive purpose"<sup>126</sup> without additional restrictions outlined above.

- It is also recalled that in physical space, right to assembly is unlikely to be protected if it is held in **privately owned space** against the wishes of the owner. As online protests take place in space which exists on privately owned servers (over which protestors have limited control), some may argue that only limited protection to such protest can be awarded. At the same time, we recall that protestors should be granted access to certain privately owned places if they are intended for typical and routine public use. We also recall that the ECtHR recognised the principle that the right to freedom of association might involve access to private property if it was the only effective way of exercising the right.<sup>127</sup> An argument can be made by analogy that the Internet is a global public square and is the only "effective" means of organising a protest on an issue globally.

These forms of protests can be restricted by both governments and ISPs through blocking, filtering, removal and other technological or legal limits and could be taken against individuals and Internet Service Providers (ISPs). Hence, measures to guarantee the protection of virtual protests would include prohibitions on filtering, blocking and cutting off access of individuals to the internet as they are almost always likely to be disproportionate measures and a danger of over-blocking. In addition, liability regimes on for the ISPs in some countries could also be used to prevent such protests and greater protection would have to be specified to this.

Another aspect of protection would need to take into account the right to privacy of such protestors.

## Electronic civil disobedience

Similar to ordinary civil disobedience, protestors do not engage in “electronic” protests for malicious personal and financial motives (e.g. to misuse information or cause serious harm). Instead, they undertake them for communicative and political goals, to highlight their political or social causes. International standards on cybercrime<sup>128</sup> and national legislations largely do not distinguish between the motives behind the action and criminalise these methods and techniques. However, we observe that the Council’s of Europe Convention on Cybercrime (the only binding international treaty on the subject adopted so far) does not expressly address electronic civil disobedience, which is not explicitly recognised in the cybercrime or communication laws. Rather, it merely proposes laws that, when applied to circumstances in which these techniques have been used, renders them illegal.

Electronic civil disobedience can take several forms, including:<sup>129</sup>

- **Distributed denial of service (DDoS)** attacks make computer and web systems unavailable by several means (e.g. overloading the system). The tactic has been employed by activists groups since the mid-90s and has substantially increased recently. For example, the Electronic Disturbance Theatre (EDC) used DDoS attack in support of the Zapatista movement and took down websites of the President of Mexico, the Frankfurt Stock Exchange and the US Department of Defense in September 1998.<sup>130</sup> The Anonymous movement carried several such attacks, e.g. Operation Payback targeting the Motion Picture Association of America and the Record Industry Association of America, the Spanish police, the Tunisian, North Korean, Myanmar and US governments, the Westboro Baptist Church, PayPal, or the Church of Scientology.<sup>131</sup>
- **Site defacement and redirects** (also could be compared to protesting in close proximity of a building; the principle “within sight and sound” could be applied online in this respect) is a tactic of obtaining entrance to high-visibility websites that replaces or alters the contents, or redirects their browsers to another site with a particular message, without damaging the targeted site. The tactic was used, against several Indonesian government websites; by British anti-nuclear activists; Kosovo Albanians against Serbian websites, or by Anonymous against various government sites.<sup>132</sup>
- **Virtual sit-ins**, similar to low level DDoS attacks, overwhelm or crash targeted servers by creating artificially high demand for its content.<sup>133</sup> This is done either by manually and repeatedly reloading the targeted website or by downloading special code that automatically and repeatedly reloads the targeted site.
- **Infrastructure-based techniques** involve the creation of alternate systems to replace those that have been compromised by state or corporate information-gathering schemes, and circumventing internet restrictions imposed by the government (banned websites – Facebook, Youtube etc); these have been used, e.g., in Vietnam, or Turkey.<sup>134</sup>

As noted above, this form of protest may constitute a criminal offence under “cyber crime” or communications legislation. They have also become subject of various retaliatory and selective prosecutions that are likely to increase in the future (especially in the US). However, German Higher Regional Court in Frankfurt in May 2006 decided that a collective blockade of Lufthansa website (low level of DDoS attack) in the context of protesting against the

company's participation in the deportation of asylum-seekers was a legitimate form of freedom of expression.<sup>135</sup>

Here, we reiterate the need to consider these actions as an exercise of freedom of expression and freedom of assembly and assess restrictions on them under the three part test. Similar to civil disobedience in physical world, provisions should be made for public interest considerations of prosecutorial discretion and for adopting set of mitigating factors when considering cases.

# About ARTICLE 19

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ARTICLE 19: Global Campaign for Freedom of expression (ARTICLE 19) is an international human rights organization that works globally to promote and protect freedom of expression and information. It was founded in 1987 and has international office in London and regional offices in Bangladesh, Brazil, Kenya, Mexico, Senegal, Tunisia and Myanmar.

The ARTICLE 19 advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. It has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19’s overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals, as well as existing laws that affect the right to freedom of expression, and develops policy papers and other documents. This work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All legal and policy materials are available at <http://www.article19.org/resources.php/legal>.

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<sup>1</sup> [Resolution 15/21](#), 30 September 2010, A/HRC/RES/15/21.

<sup>2</sup> *Ibid.*; also Resolution 19/35, 23 March 2012; the [Resolution 28/16](#), 7 September 2012, A/HRC/RES/21/16; [Resolution 22/10](#), 21 March 2013, A/HRC/RES/22/10; HRC Resolution 24/5, October 2013; and [HRC resolution 25/38](#), A/HRC/25/L.20 28 March 2014.

<sup>3</sup> The [Report on situation of human rights defenders in India](#) of the Special Rapporteur on situation of human rights defenders, 6 February 2012, A/HRC/19/55/Add.1); the [2011 report](#) of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 23 May 2011, A/HRC/17/28); the [Report on situation in Morocco](#) of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment and punishment, 28 February 2013, A/HRC/22/53/Add.2); the [Report on violence against women, its causes and consequences](#) of the Special Rapporteur on violence against women; or the Special Rapporteur on Belarus.

<sup>4</sup> See African Commission on Human and Peoples’ Rights, Resolution ACHPR/Res.151 (XLVI) 09 on the need to conduct a study on freedom of association in Africa, and Resolution ACHPR/Res.261 (LIV) 13.

<sup>5</sup> The [2007 Guidelines on Freedom of Peaceful Assembly of the Venice Commission](#); and subsequent OSCE [Guidelines on Freedom of Peaceful Assembly](#) of 2010 (OSCE Guidelines). They summarise the best practices from national legislations in OSCE states and the case-law of the European Court of Human Rights (ECtHR) to illustrate various options used to regulate issues pertaining to the freedom of peaceful assembly.

<sup>6</sup> E.g. annual reports of the Special Rapporteur for Freedom of Expression at the Organisation of American States (OAS) or the work of the Human Rights Commissioner of the Council of Europe.

<sup>7</sup> For the controversy that accompanied the adoption of the latest HRC resolution see, for example, ARTICLE 19, [Human Rights Council: States must protect rights during protests](#), 31 March 2014.

<sup>8</sup> The 2012 Report of the Special Rapporteur on FOAA, 21 May 2012, A/HRC/20/27, para 24.

<sup>9</sup> See, e.g., ECtHR, *G. v Germany*, Appl. no. 13079/87 (1989); ECtHR, *Plattform “Arzte fur das Leben” v. Austria*, Appl. no. 10126/82 (1988), para 32. The ECtHR also repeatedly stated that freedom of expression “is applicable not only to

information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population; e.g. *Handyside v. the UK*, Appl. no. 5493/72 (1976), para 49; *Otto-Preminger-Institut v. Austria*, Appl. no.13470/1987 (1994), para 49.. See also

<sup>10</sup> Freedom of expression is guaranteed in Article 19 of the Universal Declaration of Human Rights (UDHR), Article 19 of the ICCPR and in regional human rights instruments (Article 9 of the African Charter on Human and People’s Rights, Article 13 of the American Convention on Human Rights, and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms).

The rights to freedom of peaceful assembly and association are guaranteed in Article 20 of the UDHR, given legal force through Articles 21 and 22 of the ICCPR respectively, and reflected in many other international human rights treaties, e.g. Article 8 of the International Covenant on Economic, Social and Cultural Rights; Article 7(c) of the Convention on the Elimination of All Forms of Discrimination against Women; International Labour Organization Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise; Convention on the Rights of the Child, Article 15. Freedom of association is further protected in the field of labour relations. See, two International Labour Organisation-sponsored instruments: the Convention concerning Freedom of Association and Protection of the Right to Organise (ILO Convention No. 87) and the Convention concerning the Application of the Principles of the Right to Organise and Bargain Collectively (ILO Convention No. 98).

The right to participate in the conduct of political affairs (also the right to political participation) refers to citizens’ right to seek to influence public affairs and can take various forms, including participation in protests. It is guaranteed in Article 21 of the UDHR and Article 25 of the ICCPR as well as in regional treaties (Article 23 para 1 of the American Convention and Article 13 of the African Charter) and non-binding declarations (e.g. Harare Commonwealth Declaration, 20 October 1991).

<sup>11</sup> For the rights to freedom of expression and freedom of assembly and association, the restrictions a) on the right to freedom of expression must be “provided by law, whereas limitations on the right to freedom of peaceful assembly must be “in accordance with law;” b) must be in pursuit of “legitimate aim,” namely respect for the rights or reputations or others; the protection of national security or of public order; or the protection of public health or morals; while the right to freedom of peaceful assembly may also be restricted to protect public safety; and c) must be necessary for the protection of the legitimate aim. Additionally, under Article 20(2) of the ICCPR, states are obliged to prohibit by law “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (incitement).

<sup>12</sup> See, e.g. *Steel & Morris v the UK*, Appl. No. 68416/01 (2005).

<sup>13</sup> R.F. Kennedy Center, [Landmark Case to Protect Right to Protest in Africa Accepted by Human Rights Commission](#), November 2013

<sup>14</sup> The 2012 report of the Special Rapporteur on FOAA, *op.cit.*

<sup>15</sup> The Right to Peaceful Assembly and Peaceful Procession [Act No. 15/2011](#) of Myanmar; The Egypt Law 107/2013 On the Right to Public Gatherings, Processions and Peaceful Protests of 24 November 2013; The Turkish Penal Code and Section 10 of the Law on Meetings and Demonstration Marches (Law no. 2911); or the 2013 Public Order Management Bill of Uganda.

<sup>16</sup> E.g. Section 11 of the [UK Public Order Act 19](#).

<sup>17</sup> HR Committee, *Kivenmaa v. Finland*, *op. cit.*; Inter-American Commission for Human Rights report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, para 57.

<sup>18</sup> The 2012 Report of the Special Rapporteur on FOAA, *op. cit.*, para. 28.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, para 29; see also and the [Venice Commission’s statements](#) on the right to spontaneous protests; ECtHR, *Eva Molnar v. Hungary*, Appl. no. 10346/05 (2009); *Ezelin v France*, Appl. no. 11800/85 (1991) or *Christians against Racism and Fascism v UK*, Appl. no 9440/78 (1980).

<sup>21</sup> ECtHR, *Bukta & Others v. Hungary*, Appl. no. 25691/04 (2007), para 36.

<sup>22</sup> On 29 September 2011, Sierra Leone police announced an indefinite ban on all political rallies and public meetings in the country; ARTICLE 19, [Sierra Leone: Blanket ban on political rallies and public meetings illegal](#), 13 October 2011.

<sup>23</sup> Extended protests in Parliament Square, London, are prohibitive by bylaws specifically targeted at preventing “staying in a place for any period.” The Police Reform and Social Responsibility Act 2011 imposes an absolute prohibition on the use of tents structures for any period in Parliament Square Gardens or surrounding pavement. The UK legislation was recently unsuccessfully challenged by activists for terminating their “6 year peace vigil” outside Parliament.

<sup>24</sup> The 2013 Egyptian law, *op.cit.*, bans overnight sit-ins and gatherings in place of worship, a regular meeting place for all protests in Egypt and one heavily used by Islamist groups. It also grants security agencies the right to bar any protests or public gatherings, including election-related meetings of political parties, if they “pose a serious threat to security or peace.

<sup>25</sup> During the 1999 WTO meetings in Seattle, USA, the 25 block “restricted zone” was imposed on all protests. During the 2005 presidential inauguration, the protests were restricted in areas of more than 100ft from the inauguration parade route. The New York City applied the 1/2 block “frozen zone” or “bubble” to shield the Mayor from union members protesting at the 2004 Republican National Convention. On 8 March 2012, in Tunisia, the Ministry of the Interior issued an

indefinite ban on all demonstrations, marches and forms of collective expression on Habib Bourgiba Avenue, a focal point for demonstrations during the revolution.

<sup>26</sup> Law 32/2006, Article 11 stipulates that demonstrations cannot start before sunrise or continue after sunset except by special written permission from the general director of the police or his deputy; the Governor may specify a number of public areas in his province to hold demonstrations, for which organizers must apply for permission. In August 2013, the King issues a decree amending the law to ban demonstrations in the capital Manama (the August 2013 amendment of the Decree 18/1973 on public gatherings and demonstrations).

<sup>27</sup> The US and UK authorities and private companies relied on land use regulations and zoning codes against Occupy Movement in Zuccotti Park in New York and in front of the Saint Paul Cathedral in London.

<sup>28</sup> *Balçık & Others v Turkey*, Appl. no. 25/02 (2007), para 52; *Ashughyan v. Armenia*, Appl. no. 33268/03, (2008), para 90.

<sup>29</sup> The [Report of the Office of the Special Rapporteur for Freedom of Expression](#), OAS, 25 February 2009, para 70.

<sup>30</sup> ECtHR, *Appleby & Others v UK*, Appl. no. 44306/98 (2003).

<sup>31</sup> In July 2013, the Duma adopted [Federal Law](#) “On Introducing Amendments to Article 5 of the Federal Law ‘On the Protection of Children from Information Harmful to their Health and Development’ and Miscellaneous Legal Acts of the Russian Federation for the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values’.” The law makes it effectively illegal to hold any gay pride events.

<sup>32</sup> In October 2012, in Ukraine attempted to adopt administrative laws prohibiting the “propaganda of homosexuality” and the Draft Law (no. 10290) received a broad support from Ukrainian MPs.

<sup>33</sup> In March 2010, Lithuania adopted the Law on the “protection of minors against the detrimental effect of public information.” Attempts have also been made to amend the Administrative Offences Code to the same effect.

<sup>34</sup> On 23 February 2012, the Moldovan city of Bălți adopted provisions to ban “propaganda of non-traditional sexual orientations” in a form of assembly. Similar measures were subsequently adopted by other cities (Cahul, Ceadrî Lunga, Drochia and Soroca, or the districts of Anenii Noi and Basarabasca)

<sup>35</sup> *Alekseyev v. Russia*, Application Nos. 4916/07, 25924/08, 14599/09, para 97.

<sup>36</sup> [Rabat Plan of Action](#) on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, Conclusions and recommendations emanating from the four regional expert workshops organised by OHCHR, in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012.

<sup>37</sup> ARTICLE 19, [Prohibiting incitement to discrimination, hostility or violence](#), December 2012.

<sup>38</sup> The 2011 report of the SR on extrajudicial, summary or arbitrary executions, *op.cit.*, para 13.

<sup>39</sup> The 2013 Egypt law on protest, *op.cit.*

<sup>40</sup> See ARTICLE 19, [Cambodia: UN human rights review as protest crackdown continues](#), 27 January 2014.

<sup>41</sup> ARTICLE 19, [Mexico: Increasing violence against protestors](#), 31 October 2013.

<sup>42</sup> ARTICLE 19, [Venezuela: Government must put an end to the repression of protestors and guarantee free flow of information](#), 21 February 2014.

<sup>43</sup> ARTICLE 19, [Authorities arrest ‘orchestrators’ of Gezi Park protests under guise of combating terrorism](#), 17 July 2013.

<sup>44</sup> ARTICLE 19, [Ukraine: Excessive use of force against protests must stop](#), 3 December 2013.

<sup>45</sup> Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders Havana, Cuba, 27 August to 7 September 1990. In particular: Principles 5, 9, and 12 – 14.

<sup>46</sup> Adopted by the UN General Assembly in resolution 34/169 of 17 December 1979.

<sup>47</sup> The report of the Special Rapporteur on FOAA to the UK, *op.cit.*

<sup>48</sup> Amnesty, [Egypt's Women Must Be Allowed to Protest in Peace](#), 23 December 2011.

<sup>49</sup> Islamic World Peace Forum, [The Incapacitation of Women's Rights in Bahrain Protests](#).

<sup>50</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, UNTS, vol. 1249, p. 13.

<sup>51</sup> See, e.g. Statewatch News Online reports from [2001](#) and [2009](#) in Italy and [2009](#) in Denmark; Julio Godoy, ‘[Dissent Within, Confrontation Without](#)’, *Inter Press Service*, June 2007.

<sup>52</sup> *Piermont v France*, Appl. nos. 15773/89 and 15774/89 (1995), paras 60 – 64.

<sup>53</sup> E.g., in the UK, the organisation [Fitwatch](#) documented excessive collection of intelligence on peaceful protestors and the methods used to gain such materials against student protests on tuition fees in November – December 2012.

<sup>54</sup> [Amnesty blasts Denmark's COP15 policing](#), 27 May 2010 (968 protestors were held under a special law here).

<sup>55</sup> Statewatch News Online, [Policing of ‘noborder camp’ in Brussels violates basic civil rights](#), October 2010.

<sup>56</sup> *Ibid*,

<sup>57</sup> The [2009 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#), Martin Scheinin, A/HRC/13/37, para 36.

<sup>58</sup> BBC, [Mass arrest of protestors at rallies in Russia](#), 25 February 2014; The Guardian, [China: arrests follow protests over response to catastrophic floods](#), 26 January 2014; NY Times, [Turkish Protestors Defy Government's May Day Ban](#), 1 May 2014; RT, [Hundreds arrested in Brazil as protest against World Cup spending grows violent](#), 23 February 2014; HRW, [Algeria: Arrests at Protest Against President](#), 2 May 2014; Reuters, [Azerbaijan police arrest youths at anti-government](#)

[protest](#), 26 January 2013; OMCT, [Cambodia: Ongoing arbitrary detention of 21 protestors and fear for their safety](#), 28 March 2014.

<sup>59</sup> The 2013 [amendments](#) to the Criminal Code of Azerbaijan increased the maximum fine for participating in unsanctioned public gatherings from 955 EUR to 7600 EUR; similarly, the amendments to the Administrative Code increased fines from between 7 and 12 EUR to between 480 and 1,050 EUR for participants and between 1,400 and 2,900 EUR for organisers.

<sup>60</sup> The 2012 Right to Peaceful Assembly and Peaceful Procession Act and Article 505(b) of the Penal Code.

<sup>61</sup> The 2013 Egyptian law imposes severe fines and prison sentences for violators (7 years imprisonment for using violence in a protest and for protesting in or around a place of worship, up to one year imprisonment for covering the face during the protest and the fines up to £27,000 for being violent in a protest and £925 for protesting without a permit

<sup>62</sup> Thai PBS, [CAPO to use combined forces against capital shutdown](#), 4 January 2014.

<sup>63</sup> IACHR, 2005, Annual Report of the Office of the Special Rapporteur for Freedom of Expression," paras 96 and 97.

<sup>64</sup> See, e.g. The Age, [The Feeling of Gunns](#), 12 March 2011.

<sup>65</sup> See, e.g. [No Dash For Gas](#), EDF Law suit.

<sup>66</sup> See, e.g. *Vélez Restrepo and Family vs. Colombia*, Decision of 3 September 2012, Series C No. 248.

<sup>67</sup> OSCE Representative on Freedom of the Media, [Special Report: Handling of the media during political demonstrations, Observations, and Recommendations](#) (June 2007)

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> E.g. Rita Safranek, The Emerging Role of Social Media in Political and Regime Change, March 2012; Hanrath & Claus Leggewie, [Revolution 2.0? The Role of Digital Media in Political Mobilisation and Protest](#), 2012.

<sup>71</sup> There was no reporting in Turkish TV stations of protests on 31 May 2013, when the protests broke in Gezi Park, Istanbul.

<sup>72</sup> See, e.g. the [briefing of Ivan Šimonović](#), Assistant Secretary-General for Human Rights on situation in Ukraine, which mentions "biased media reporting, fuelling fear and insecurity among the ethnic Russian community," 16 April 2014.

<sup>73</sup> John McCarthy and Others, Selection Bias in the Newspaper Coverage of Protests in Minsk, Belarus, 2008.

<sup>74</sup> Al Jazeera, [Al Jazeera staff resign after 'biased' Egypt coverage](#), 8 July 2013.

<sup>75</sup> The BBC's Persian and Arabic language services drew heavily on content created by ordinary citizens to cover events in the respective countries.

<sup>76</sup> Riego & Rodriguez, Ladies in White: The Peaceful March Against Repression in Cuba and Online, 24 Harv. HR. J. 221 2011.

<sup>77</sup> See the Resolution 25/36, *op.cit.*

<sup>78</sup> The 2011 Report of the Special Rapporteur on FOE, *op.cit.*, in which he highlighted that blocking access to associations' websites and communications tools, can have a significant negative impact on assembly and association, and also the danger of "just-in-time" blocking at "key political moments, such as elections, times of social unrest, or anniversaries of politically or historically significant events; para 30.

<sup>79</sup> E.g. General Comment No. 34, *op.cit.*, states that "journalism is a function shared by a wide range of actors, including ... bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere;" it also stated that general State systems of registration or licensing of journalists are incompatible with freedom of expression guarantees of Article 19 (3) of the ICCPR, para. 44. Recommendation No. R (2000)7 of the Committee of Ministers to Member States on the right of journalists not to disclose their sources of information, adopted 8 March 2000, defines journalist as "any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication.

<sup>80</sup> HR Committee, Concluding observations on Lesotho, 08/04/1999, UNDoc. No. CCPR/C/79/Add.106, para 23; or [Joint Declaration](#) of 18 December 2003.

<sup>81</sup> On 28 January 2011, Egyptian President ordered shutting off the Internet for five days across the country; ARTICLE 19, [Human Rights Council: Rights to peaceful assembly and association online recognised](#), 1 October 2012.

<sup>82</sup> On 21 September 2012, Pakistan authorities blocked all mobile telephone reception in 15 cities to prevent demonstrations against the film The innocence of Muslims. Similar "kill-switch" tactics were used to control national celebrations in the country, including Eid on 20 August 2012, Independence Day on 14 August 2012, and Pakistan Day on 23 March 2012.

<sup>83</sup> On 3 June 2011, Syrian authorities blocked all internet services the day before more than 50,000 protestors took to the streets to mark "Children's Friday" in honour of children killed during the uprising.

<sup>84</sup> Global Voices, [Bahrain Bans BlackBerry Chat Groups](#), 12 April 2010.

<sup>85</sup> In the UK in 2010, the website Fitwatch, which was giving advice to those participating in student protests was blocked by Metropolitan police; see e.g. ARTICLE 19, [UK: Police Monitoring Website Takedown Illegal](#), 16 November 2010.

<sup>86</sup> The Turkish authorities previously blocked large sites used by protestors, such as YouTube and Google Sites; while the ECtHR found such "wholesale blocking of access" incompatible with the guarantees of the European Convention; *Yildirim v. Turkey*, Appl. no. 3111/10 (2012).

<sup>87</sup> In March 2013, the 34th Civil Court of São Paulo issued a decision forbidding Ricardo Fraga de Oliveira, a campaigner challenging the construction of a new property development, *inter alia*, from posting anything about this subject on Facebook, under the threat of a fine of 10,000 Reais (USD 5,000) for each infraction. The order was later upheld by the Court of Justice in the State of São Paulo. See, e.g. ARTICLE 19, [Brazil: Court approves ban on development protestor](#), 21 May 2013.

<sup>88</sup> In August 2012, in Belarus, the State Security Committee arrested a number of moderators of online communities. They interrogated and beat them, searched their apartments and confiscated their laptops. Pavel Yeutsikhiyeu, a moderator of the “We’ve had enough of this Lukashenko” group on the Russian social network *VKontake*, was sentenced by Minsk’s Kastychnitski district court to five days in prison. The government is also reported to have hacked into a number of online discussion forums to remove content and to libel forum administrators; ARTICLE 19, *op.cit.*

<sup>89</sup> See, the attempts to introduce the Protecting Cyberspace as National Asset Act of 2010, S. 3480, 11<sup>th</sup> Congress (2010).

<sup>90</sup> India’s IT Amendment Act, passed quickly in the aftermath of the Mumbai terror attack, states that executives of domestic and international Web companies can be held accountable for failing to uphold “public order, decency or morality”, those vague clauses that could be extended to protest related content.

<sup>91</sup> In 2011, Apple Inc. blocked “ThirdIntifada,” applications used to stream news stories and editorials in Arabic and announces upcoming protests; see e.g. [Apple Removes Anti-Israel 'ThirdIntifada' App From App Store](#), 22 June 2011.

<sup>92</sup> WSJ, [Venezuela Media Largely Ignored Protests](#), 14 February 2014.

<sup>93</sup> ARTICLE 19, [World Television Day: Satellite jamming and freedom of expression](#), 21 November 2011.

<sup>94</sup> See, Report of the Special Rapporteur on FOE, 4 June 2012, A/HRC/20/17, para. 50. See also, RSF, [Resolution recognizes role of journalists covering protests](#), 1 April 2014 (observing that at least 58 journalists were injured in Ukraine from the start of the Euromaidan protest movement between November 2013 till 19 January 2014; around 100 journalists have been the victims of violence in the wave of protests that began in Brazil in June 2013).

<sup>95</sup> In 2011, in Belarus, more than 100 journalists and bloggers arrested and around 30 received criminal sentences

<sup>96</sup> Journalists were arrested when covering protests in September 2011.

<sup>97</sup> In Uganda, in February 2011, journalists were targets of violence and surveillance during the presidential election and were targeted again during the brutal crackdown on the “Walk to Work” protests later in the year, when dozens of journalists were arrested.

<sup>98</sup> In Chile, where student protestors questioned the over-concentration of media ownership, violence against journalists included beatings, cyber-attacks and attacks on editorial staffs. Many of these assaults, often accompanied by heavy-handed arrests and destruction of equipment, were carried out by abusive armed police who were rarely called to account.

<sup>99</sup> In February 2014, at least 13 journalists were harassed and assaulted by law enforcement in Venezuela, when covering protests in Caracas. Seven journalists were also arrested.

<sup>100</sup> In Russia, during demonstrations in Moscow between 6–9 May 2012, at least a dozen citizen journalists were arrested and 4 reporters were injured by the police while reporting on protests.

<sup>101</sup> In Turkey, media reported that at least 153 journalists had been injured and 39 detained in relation to the Gezi park protests. Of 3 journalists that were arrested, 2 remain in prison. Although there have been calls for a Parliamentary enquiry, nobody has been brought to account through the criminal law for these violations.

<sup>102</sup> The [UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#) was endorsed by the UN Chief Executives Board on 12 April 2012. The Plan was prepared during the 1<sup>st</sup> UN Inter-Agency Meeting on this issue, convened by the Director General of UNESCO at the request of the Intergovernmental Council of the International Programme for the Development of Communication.

<sup>103</sup> [Joint declaration on crimes against freedom of expression](#), issued by four special mandates on freedom of expression, June 2012.

<sup>104</sup> *Vélez Restrepo and Family vs. Colombia*, Decision of 3 September 2012, Series C No. 248.

<sup>105</sup> In Mexico, ARTICLE 19 recorded 46 direct attacks against journalists while reporting on a massive demonstration that took place on 2 October 2013 in which citizen journalists and freelancers were specially targeted. 32 of these attacks were committed by law enforcement.

<sup>106</sup> Several philosophical and political sources deal with protest through disobedience of the law (e.g. Thoreau, Gandhi, M.L. King or John Rawls). For example, it has been defined as “public, non-violent political act contrary to law carried out with the aim of bringing about change in law or policy by making an appeal to conscience, the conscience of the authorities and especially the conscience of the majority of the public – the conscience, in short, of whoever it is that issues, enforces, and supports the law being broken;” see Hugo Bedau, *On Civil Disobedience, Morality and the Law*, 1988, para 69.

<sup>107</sup> Matthew Hall, *Guilty But Civilly Disobedient: Reconciling Civic Disobedience and the Rule of Law*, 2004 *Cardozo Law Review*, Vol. 28.5.

<sup>108</sup> See, e.g. the ECtHR, *Steel and Morris vs. the UK*, *op.cit.* Also, the German Supreme Court stipulated that participation in this form of protests represents “active engagement in the life of the community and as a means in which people could participate directly in the political process;” see 69 Bverfge 315, 343-347 (1985). In *R v. Jones*, [2006] UKHL 16, Lord

Hoffmann stated that it is the "mark" of a civilized community to accommodate protest and civil disobedience and added that "there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protestors behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protestors into account;" para 89.

<sup>109</sup> C. R. Sunstein, *Why Societies need Dissent*, (2003), p. 6.

<sup>110</sup> *Ibid.*, p. 7.

<sup>111</sup> See, *Plattform 'Arztefürdas Leben' v Austria*, *op.cit.*; *Ezelin v France*, *op.cit.*; *Steel v UK*, *op.cit.*, *Chorherr v Austria*, Appl. no. 13308/87 (1993); *Hashman and Harrup v the UK*, Appl. no. 25594/94 (1999); or *G. vs Germany*, *op.cit.*. Most of the jurisprudence consists of admissibility decisions in the Commission, finding that the application was manifestly ill-founded.

<sup>112</sup> See, e.g. *US v. Schoon*, 971 F.2d 193, 1992 U.S. App. 17598. In order to invoke the defence, defendants must prove that they were faced with a choice of evils and chose the lesser evil, b) they acted to prevent imminent harm, c) they reasonably anticipated a causal relation between their conduct and the harm to be avoided; and (d) that there were no other legal alternatives to violating the law, and d) the legislature has not acted to preclude the defence by a clear and deliberate choice regarding the values at issue. Courts generally require that all the factors be proven in order for the defendant to succeed in the defence. The necessity must also be established by objective criteria and not be mere opinion of defendants; e.g. *US v. Aguilar*, 883 F.2d 662, 693 (9th Cir. 1989). See also, *State v. Diener* (706 S.W.2d 582 (Mo. Ct. App. 1986) which found that the occurrence of nuclear catastrophe was speculative); *US v. Maxwell* (254 F.3d 21, 27 (1st Cir. 2001) and *US v. May* (622 F.2d 1000, 1008-09 (9th Cir. 1980) which found that existence of nuclear weapons did not satisfy the requirement of imminent harm); *State v. Dorsey* (395 A.2d 855, 857 (N.H. 1978) which ruled that the necessity defence was limited to acts directed to the prevention of harm that is *reasonably certain to occur*); or *People v. Scutari* (560 N.Y.S.2d 943 (N.Y. Crim. Ct. 1990) which found that trespass in the Congress was not necessary to avoid in relation to the US foreign policy and was not an emergency matter).

<sup>113</sup> *State v. Keller*, No. 1372-4-84 (Vt. Dist. Ct. Nov. 17, 1984).

<sup>114</sup> This section is based on various proposals in the political theory; in particular, J. Rawls, *Theory of Justice* (rev. ed. 1999); Marshall Cohen, *Liberalism and Disobedience*, 1 PHIL. & PUB. AFF. 283, 285 (1972), M. DeForrest, Comment, *Civil Disobedience: Its Nature and Role in the American Legal Landscape*, 33 GONZ. L. REV. 653, 658 (1997-98), 660-63; M. Hall, *op.cit.*; Fenwick & Phillipson, *Direct action, Convention values and the Human Rights*, 21 Legal Stud. 535 2001.

<sup>115</sup> *G. v Germany*, *op.cit.*

<sup>116</sup> *C.f. Balçıkıv&vOthers v Turkey*, *op.cit.*, para 52; *Ashughyan v. Armenia*, *op.cit.*, para 90.

<sup>117</sup> The 2012 Report of the Special Rapporteur on FOAA, *op.cit.*, para 84.

<sup>118</sup> The 2012 Report of the Special Rapporteur on FOE, *op.cit.*, para 22.

<sup>119</sup> The 2009 report of the Special Rapporteur, *op.cit.*, para 70.

<sup>120</sup> Hillary Clinton, [Remarks on Internet Freedom](#), 21 January 2010.

<sup>121</sup> See, e.g. ECtHR, *Tyrer v. the UK*, Appl. no. 5856/72 (1978).

<sup>122</sup> See, *mutatis mutandis*, *Refah Partisi (the Welfare Party) & Others v. Turkey*, Appl. nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 100, ECHR 2003-II (2003); and *Selmouni v. France*, Appl. no. 25803/94, (1999).

<sup>123</sup> UK [Criminal Justice and Public Order Act 1994](#)

<sup>124</sup> See, e.g. *US v Fernandez*, 1993 WL 88197 (SDNY 1993).

<sup>125</sup> Applying the historical confines standard (created in the case of *Forbes*, 523 U.S. 666, 678 (1998)), the Court ruled that because Internet access did not exist until recently, it had not "immemorially been held in trust for the use of the public" for purposes of free expression; *United States v. Am. Library Ass'n*, 539 U.S. 194, 205-06 (2003), 205-06.

<sup>126</sup> Proposal of the 2012 Report of the Special Rapporteur ("an intentional and temporary gathering in a public space for a specific purpose"), *op. cit.*, para 24; and the OSCE Guidelines ("the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.")

<sup>127</sup> *Appleby v the UK*, *op.cit.*

<sup>128</sup> *C.f.*, the UN General Assembly [Resolution 55/63](#) Combating the criminal misuse of information technologies, A/RES/55/63, 22 January 2001 and [Resolution A/Res/65/230](#), the 12<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice, 1 April 2011; or the Council of Europe, [Convention on Cybercrime](#), 23 November 2001, 2296 U.N.T.S. 167. There is also a draft African Union Convention on Cyber Security, which intends to introduce regional regulation.

<sup>129</sup> Other forms include "cyber sabotage" and "information theft," the legality of which is most obviously illegal.

<sup>130</sup> Stefan Wray, *The Electronic Disturbance Theater and Electronic Civil Disobedience*, June 1998.

<sup>131</sup> For comprehensive list of attacks by Anonymous, see e.g. New York Times, [Anonymous](#) (Internet Group).

<sup>132</sup> S. Kreimer, *Technologies of Protest: Insurgent Social Movements and the First Amendment in the Era of the Internet*, Un.Pen.L.R., 150-1.

<sup>133</sup> Wray, *op.cit.*

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<sup>134</sup> Jak Phillips, 'The Civil Disobedience of the 21st Century': How Vietnamese Bloggers Evade Controls, October 2013.

<sup>135</sup> Higher Regional Court in Frankfurt, [No. 1 Ss 319/05](#), 22 May 2006.