



ARTICLE¹⁹

The Right to Protest: **Principles on protection of** **human rights in protests**

2015

Policy Brief

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Introduction

Protests play an important part in the civil, political, economic, social and cultural life of all societies.

Historically, protests have often inspired positive social change and the advancement of human rights, and they continue to help define and protect civic space in all parts of the world. Protests encourage the development of an engaged and informed citizenry. They strengthen representative democracy by enabling direct participation in public affairs. They enable individuals and groups to express dissent and grievances, to share views and opinions, to expose flaws in governance and to publicly demand that the authorities and other powerful entities rectify problems and are accountable for their actions. This is especially important for those whose interests are otherwise poorly represented or marginalised.

Yet governments around the world too often treat protests as either an inconvenience to be controlled or a threat to be extinguished.

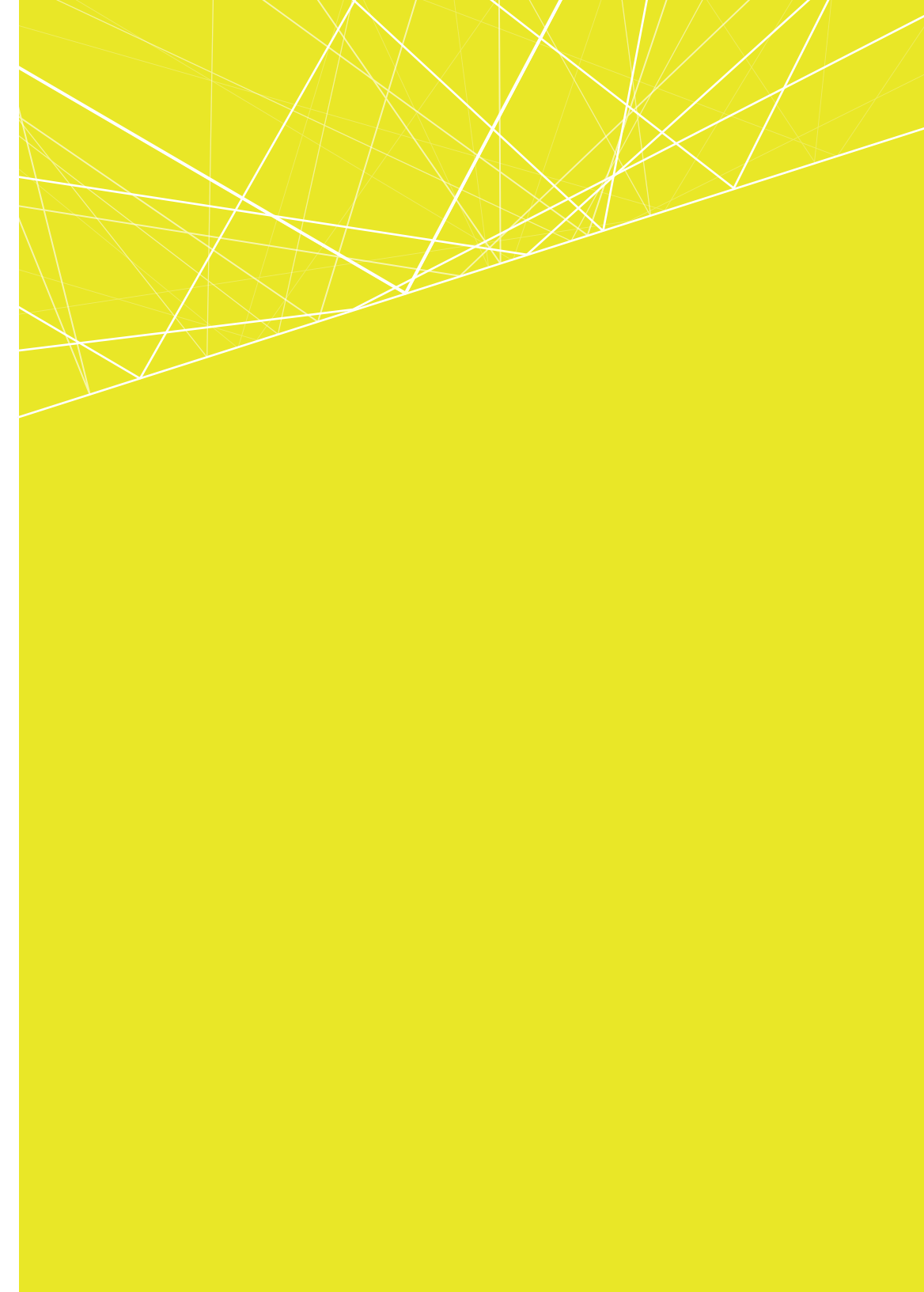
Digital technologies offer new opportunities and challenges to protests and they are used both as a crucial medium for enabling protests to take place and a platform for protest. Technological advancements have also significantly enhanced the ability of governments to infringe and potentially violate human rights in protests.

The right to protest formally involves the exercise of numerous fundamental human rights, and is essential for securing all human rights. While important in all societies, few protests are completely free of risk or potential harm to others. Hence, international standards allow for restrictions on many of the human rights engaged in protests; however, these are allowed only under limited and narrow circumstances. Despite existing guarantees in international human rights law, it has been widely recognised that States need greater guidance in understanding and implementing their obligations in this field.

These Principles, therefore, elaborate a set of minimum standards for the respect, protection and fulfilment of the right to protest, while promoting a clear recognition of the limited scope of restrictions. They represent a progressive

interpretation of international human rights standards, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights; of regional human rights standards; of accepted and evolving state practice (reflected, *inter alia*, in national laws and the judgments of national courts); and of the general principles of law recognised by the community of nations (in particular the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the UN Code of Conduct for Law Enforcement Officials, the standards elaborated by special procedures of the UN Human Rights Council, and the Organization for Security and Co-operation in Europe's Guidelines on Freedom of Peaceful Assembly).

The Principles are intended to be used by civil society organisations, activists, human rights defenders, lawyers, judges, elected representatives, public officials and other stakeholders in their efforts to strengthen the protection of the right to protest locally, regionally and globally.



Preamble

We – individuals and organisations – who endorse and agree to the present Principles

Convinced that protests constitute a fundamental pillar of democracy and complement the holding of free and fair elections;

Recalling that protests occur in all societies, as people stand up for their civil, political, economic, cultural and social rights, struggle against repression, fight against poverty, protect the environment or demand sustainable development, and thereby contribute towards progress;

Bearing in mind that participating in protests enables all people to individually and collectively express dissent and seek to influence and strengthen governments' policymaking and governing practices, as well as the actions of other powerful entities in society;

Highlighting that the right to protest embodies the exercise of a number of indivisible, interdependent and interconnected human rights, in particular the rights to freedom of expression, freedom of peaceful assembly and of association, the right to take part in the conduct of public affairs, the right to freedom of thought, conscience and religion, the right to strike, the right to take part in cultural life, as well as the rights to life, privacy, liberty and security of the person, and the right to freedom from discrimination;

Recognising that a free and independent media and digital technologies are essential for ensuring the public is informed about protests and their context, for facilitating and organising protests, for enabling the free flow of information between all actors concerned in protests, and for monitoring and reporting on violations;

Acknowledging that digital technologies and the internet also provide a platform for online protests;

Emphasising the invaluable role of civil society, including journalists and human rights defenders, in protests, including through their organisation and mobilisation

of others, and by documenting, reporting on, and demanding accountability for violations of the rights of protesters;

Expressing our abhorrence at brutal repression against many protests, including the unnecessary, excessive and unlawful use of force, arbitrary detention, enforced disappearances, torture, summary executions or extrajudicial killings;

Deeply concerned by legal, policy and law enforcement measures that deter, prevent or obstruct protests, including detention, harassment and intimidation, and disproportionate criminal, administrative and civil sanctions against protesters;

Cognisant that the development of surveillance technologies and the data retention capabilities of both public authorities and private actors may violate the human rights of protesters and have a chilling effect on protests generally;

Desiring to demand that governments fulfil their obligation to respect, protect and facilitate the enjoyment of the right to protest without discrimination of any kind, to avoid unlawful, unjustified or unnecessary restrictions, and to ensure accountability for violations; and to encourage private entities to meet their responsibilities in this regard;

Call on all appropriate bodies at international, regional, national and local levels and private actors to undertake steps to promote widespread acceptance and dissemination of these Principles and give effect and practical implementation to them in all situations.

Section I: General Principles



Principle 1: Key terminology

- 1 For the purposes of these Principles,
 - a A protest is the individual or collective expression of oppositional, dissenting, reactive or responsive views, values or interests. As such, a protest may encompass, *inter alia*:
 - i Individual or collective actions, as well as spontaneous or simultaneous protests in the manner, form and for the duration of one's choosing, including through the use of digital technologies;
 - ii An individual or collective expression relating to any cause or issue;
 - iii Actions targeting any audience, including public authorities, private entities or individuals or the general public;
 - iv Actions in any location, including public or privately owned places, as well as online;
 - v Actions involving various degrees and methods of organisation, including where there is no clear organisational structure, hierarchy or pre-determined form or duration;
 - b The right to protest is the individual and/or collective exercise of existing and universally recognised human rights, including the rights to freedom of expression, freedom of peaceful assembly and of association, the right to take part in the conduct of public affairs, the right to freedom of thought, conscience and religion, the right to participation in cultural life, the rights to life, privacy, liberty and security of a person and the right to non-discrimination. The right to protest is also essential to securing all human rights, including economic, social and cultural rights;
 - c The term 'online protest' refers to a protest as defined above, but one that takes place using the internet as a tool and/or platform for the action;
 - d The term 'non-violent direct action' refers to public tactics and strategies for change using methods of disruption targeted at institutions, actors or processes, through direct and peaceful means, including conscientious

and deliberate violation of the law.

- 2 The term 'public order' refers to the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded, including the respect for human rights.
- 3 The term 'peaceful' should be interpreted broadly and exclude only those instances in which there is evidence of intent by protesters to use violence; taking into account that isolated or sporadic violence or other unlawful acts committed by others do not deprive individuals of protection as long as they remain peaceful in their own intentions or behaviour.

Principle 2: State obligations on the right to protest

- 1 States have an obligation to:
 - a **Respect the right to protest:** They should not prevent, hinder or restrict the right to protest except to the extent allowed by international human rights law;
 - b **Protect the right to protest:** They should undertake reasonable steps to protect those who want to exercise their right to protest. This includes adopting measures necessary to prevent violations by third parties; and
 - c **Fulfil the right to protest:** They should establish an enabling environment for the right to protest. This includes providing effective remedies for violations.
 - d In their constitutional provisions (or their equivalents) and in their domestic legislation, states should recognise and give effect to the indivisible, interdependent and interconnected human rights embodied in the right to protest in accordance with international human rights law. These should include:
 - A Rights essential to the exercise of protests, in particular:
 - i **The right to freedom of expression:** The freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice;

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- ii **The right to freedom of peaceful assembly:** The freedom to intentionally gather in a space for a common expressive purpose;
 - iii **The right to freedom of association:** The freedom to associate with others, including to form and join trade unions for the protection of individual and collective interests;
 - iv **The right to public participation:** The right of everyone to, *inter alia*, take part in the conduct of public affairs, directly or through freely chosen representatives.

B Rights that are often violated where protests are repressed, in particular:

- i **The right to life:** No one shall be arbitrarily deprived of his/her life;
- ii **The right to freedom from torture, and inhuman and degrading treatment;**
- iii **The right to privacy:** No one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks upon their honour and reputation. Everyone has the right to the protection of the law against such interference or attacks;
- iv **The right to liberty and security of person:** No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

Principle 3: Non-discrimination

- 1 States should guarantee in their legislation and ensure in practice that everyone can exercise their right to protest equally without discrimination based on grounds such as race, sex, ethnicity, religion or belief, disability, age, sexual orientation, gender identity, language, political or other opinion, national or social origin, nationality, property, birth or other status.
- 2 The right to protest must be guaranteed to all individuals, groups, unregistered associations and legal entities, including members of minorities, nationals (citizens), non-nationals (non-citizens), stateless people, refugees,

foreigners, asylum seekers, migrants, tourists, and people without full legal capacity.

Principle 4: Limited scope of restrictions on the right to protest

- 1 The protection of internationally guaranteed human rights must apply during all protests and must be the rule, while restrictions must be the exception.
- 2 States should ensure that derogable rights which are integral to the right to protest are subject to restrictions only on grounds specified in international law. In particular, no restriction on the rights to freedom of expression, assembly, association and privacy may be imposed unless the restriction is:
 - a **Prescribed by law:** Any restriction must have a formal basis in law which is accessible and formulated with sufficient precision to enable individuals to foresee whether a particular action is in breach of the law and to assess the likely consequences of any breach;
 - b **Pursues a legitimate aim:** Any restriction must be shown by the government to have the genuine purpose and demonstrable effect of protecting a legitimate aim, either: the protection of national security or public safety, public order (*ordre public*), the protection of public health or morals, or the protection of the rights and freedoms of others. The rights to freedom of assembly and association may also be restricted to protect public safety.
 - i **National security** may be invoked only to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external or internal source;
 - ii **Public order** may be invoked only where protesters threaten the very functioning of society or the fundamental principles on which society is founded, such as the respect of human rights and rule of law. Non-violent protests, including spontaneous, simultaneous and counter protests, should be considered an essential characteristic of public order and not a *de facto* threat to it, even where the protest causes inconvenience or disruption;

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- iii **Public health** may be invoked in protests only if evidence-based and dealing with a serious threat to health. The measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured, and simultaneously applied in the case of other activities for which people ordinarily gather;
 - iv **Public morals** may be invoked only if the restriction is demonstrably essential to the maintenance of respect for the fundamental values of the community, while respecting the universality of human rights and the principle of non-discrimination. Given the evolving nature of morality, limitations should never derive exclusively from a single tradition and should never be used to justify discriminatory practices, perpetuate prejudice or promote intolerance;
 - v The authorities must always strike a proper balance when restricting protests on the basis of protecting the **rights of others** – different groups or individuals involved in protests or those who live, work, or carry out business in the affected locality. They should always fall in favour of those asserting the right to protest, unless there is strong evidence for interfering with that right. Such restrictions should not be invoked as a result of other people's opposition to protests or in order to limit political debate. Inconvenience or disruption alone are never reason to restrict protests;
 - vi **Public safety** may be invoked to restrict the rights to freedom of assembly and association only against a specified and real danger to the life or physical integrity of people, or serious damage to their property.
- c **Necessary and proportionate** in pursuance of a legitimate aim:
- i Restrictions on the right to protest should be deemed necessary only if there is a pressing social need for the restriction. The party invoking the restriction must show a direct and immediate connection between the protest and the protected interest;
 - ii Restrictions should not be overly broad and should be the least restrictive means available in order to protect the legitimate aim. Restrictions should be shown to be compatible with democratic principles, specific and individual to attaining the particular

protective outcome and no more intrusive than other instruments capable of achieving the same restrictive result.

- 3** All restrictions based on prohibiting advocacy that constitutes an incitement to violence, discrimination or hostility ('incitement') should fully comply with the following conditions:
 - a** Grounds for prohibiting advocacy that constitutes incitement should include all grounds recognised under international human rights law;
 - b** The intent of protesters to incite others to commit acts of discrimination, hostility or violence should be considered a crucial and distinguishing element of incitement;
 - c** Legislation prohibiting incitement should include specific and clear reference to incitement to discrimination, hostility or violence with references to Article 20(2) of the ICCPR and should avoid broader or less specific language;
 - d** The prohibition of incitement should conform to the three-part test of legality, proportionality and necessity, as stipulated in Principle 4;
 - e** Criminal law penalties should be limited to the most severe forms of incitement and used only as a last resort in strictly justifiable situations, when no other means appears capable of achieving the desired protection.

Principle 5: State of emergency

- 1** States are permitted to derogate from international human rights commitments only in cases of public emergency which threaten the life of the nation; any such derogations must be officially and lawfully proclaimed in accordance with both national and international law. Hence, states should not resort to declaring a state of emergency in order to limit protests, being cognisant that protests extremely rarely, if ever, give rise to the circumstances meeting the threshold for derogation.
- 2** Any restrictions on protests in emergency situations should be of an exceptional and temporary nature and limited to those strictly required by the exigencies of the situation, and only when, and as long as, they are not

inconsistent with the government's other obligations under international law. Even where other circumstances do permit emergency derogations, such as cases of natural disaster or armed conflict, the possibility of restricting the right to protest in accordance with the test set out in Principle 4 should be generally sufficient and no derogations should be justified by the exigencies of the situation.

Principle 6: Legal protection of the right to protest

- 1 States must protect the right to protest in law, including:
 - a Ratifying and giving effect to all relevant international and regional human rights treaties, through incorporation to their domestic legislation or otherwise;
 - b Adopting clear legal, regulatory, and policy frameworks for the protection of the right to protest, in full compliance with international standards and best practice, and with the full and effective participation of civil society and other concerned stakeholders at all stages of their development;
 - c Providing for sufficient safeguards against the violation of the right to protest and for prompt, full, and effective scrutiny of the validity of the restriction by an independent court, tribunal or other independent adjudicatory body; and
 - d Ensure that effective remedies for violations of the right to protest are available, including adequate redress through criminal and civil law processes, as well as precautionary measures and non-judicial remedies, such as those awarded by dedicated regulators and agencies, national human rights institutions and/or ombudspersons.

Section II: Obligation to respect the right to protest



Principle 7: Freedom to protest

- 1 All individuals should have the freedom to take part in protests without discrimination on any grounds, as stipulated in Principle 3. Decisions by the authorities concerning the right to protest should not have a discriminatory impact, and must be free of both direct and indirect discrimination.
- 2 There should be a presumption in favour of children enjoying and exercising their right to protest on an equal basis with adults. States should abolish requirements about minimum age and parental permission which limit children's or young people's right to protest, as such blanket restrictions disproportionately impact the rights of children and, potentially, their parents or carers. Instead, states should recognise the evolving capacities of children, the principle that children's capacities increase as they develop, and recognise the developing ability of a child to exercise their own rights.
- 3 There should be a presumption in favour of exercising the right to protest. States should abolish all legislation, regulations and practices that require, in law or effect, prior permission or licenses in order for protests to take place. Notification regimes for protests should be voluntary.
- 4 On a practical note, in recognition of the fact that notification regimes for protests are used by some states as a means of regulating the use of public spaces, states should take immediate steps to ensure that any notification regimes currently in force conform fully to the following conditions:
 - a The purpose of any notification regime should be to enable states to put in place the necessary arrangements to facilitate protests;
 - b Organisers should be expected to submit only a notice of intent to organise protests and never a request for permission to hold a protest;
 - c Notice periods should be limited to a maximum of 48 hours before the protests are due to take place;
 - d Exceptions to the notification requirement should always be allowed for spontaneous protests where it is impractical to give advance notice. Public authorities should always be obliged to protect and facilitate spontaneous protests as long as they are peaceful in nature;
 - e Any notification regime should also clearly stipulate:

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- i The agency or institution responsible for receiving notifications;
 - ii That notifications can be communicated by any means and should be limited to information about the time, place and form of the protest, and not requiring disclosure of the purpose or content of the protest;
 - iii A specific and reasonable time period within which the responsible agency or institution is obliged to respond: in the absence of a response within the set period of time, it should be presumed that organisers can proceed in accordance with the terms notified;
 - iv Where notifications are given for simultaneous assemblies, i.e. two or more protests at the same place and time, each should be facilitated as well as possible. In the absence of such a possibility, a 'first come, first served' rule should be adopted, according to which the venue will be given to those who filed their notification first;
 - v The specific processes which the authorities can follow in order to facilitate more than one protest in one location, including counter-demonstrations that may be spontaneous;
 - vi The obligation to publicise decisions about notifications in order to ensure that the public has access to information on events taking place in public places.

Principle 8: Freedom of location

- 1 Everyone should have the freedom to choose the location of a protest, and the chosen location should be considered integral to its expressive purpose. States should ensure that protests are regarded as a legitimate use of public space, and not treated less favourably than any other uses. States should, therefore:
 - a Allow protests in all public places, including places that are privately owned but are 'functionally public', i.e. places that are open to the public and routinely used for public purposes. When deciding whether a place that is privately owned is functionally public, the authorities should consider its nature, geographic position and historical and actual usage;
 - b Ensure that protests can take place within sight and sound of their object

or targeted audience;

- c Facilitate counter-protests within sight and sound of each other in as much as this is possible and deploy adequate resources to that effect. They should ensure that potential disorder arising from disagreement or tension between opposing groups is not used to justify the imposition of restrictions on the protest;
- d Refrain from imposing restrictions on online protests. In this respect, the internet should be considered a quasi-public place which is routinely used for public purposes.

Principle 9: Freedom to choose the form and manner of protests

- 1 Everyone should have the freedom to choose the manner and form of a protest, including its duration.
- 2 Non-violent direct action should be considered a legitimate form of protest.
- 3 States should refrain from:
 - a Introducing time limits on the duration of protests in certain locations. Any time restrictions must be introduced after an individualised assessment in line with the test set out in Principle 4;
 - b Imposing blanket bans on the making and use of temporary structures and the use of tools that enhance amplification of protest messages, in particular visual or audio tools. Any restrictions must be necessary and proportionate, be based on grounds recognised under international human rights law and on individualised assessments in line with the test set out in Principle 4;
 - c Prohibiting individuals from concealing their physical identity during protests. Any limitations on anonymity in protests, both online and offline, should be justified on the basis of an individualised suspicion of a serious criminal offence in line with the test set in Principle 4. In addition, they should be subject to strong procedural safeguards.
- 4 Everyone should be allowed to use digital technologies in protest. States

should promote and facilitate access to digital technologies, and should not restrict their use in protests. In particular:

- a** Kill-switch measures (cutting off access to the internet and mobile telephony traffic), geo-targeted or technology-specific interference or hindering connectivity, should not be applied in response to protests as these are always a disproportionate restriction on the right to freedom of expression, and have serious repercussions beyond protests, including for the protection of other human rights;
- b** Any restriction on the use of digital technologies, including the internet, social media and mobile telephony, in protest should be in line with the test set out in Principle 4 and subject to strong procedural safeguards.

Principle 10: Freedom to choose the cause or issue of protests

- 1** Everyone should have the freedom to choose the content or cause of their protest. States should ensure, in particular, that:
 - a** Any restrictions are in line with the test set out in Principle 4 and subject to strong procedural safeguards;
 - b** Restrictions are never imposed on the right to protest simply on the basis of the authorities' own view of the merits of a particular protest;
 - c** Criticism of government, state officials or public bodies and institutions is never, of itself, sufficient ground for imposing restrictions on the right to protest;
 - d** The right to protest includes conduct or expression that may annoy or give offence to people who are opposed to the ideas or claims that a protest is seeking to promote, or conduct that temporarily hinders, impedes, or obstructs the activities of third parties.
- 2** In respect of restrictions based on the prohibition against incitement, as set out in Principle 4 paragraph 3, states should ensure that:
 - a** Protests that are not seen to constitute incitement include, but are not limited to, those that:

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- i Advocate non-violent change of government policy or the government itself;
 - ii Constitute criticism of, or insult to, the nation, the state or its symbols, the government, its agencies or public officials, or a foreign nation, state or its symbols, government, agencies or public officials or ideas;
 - iii Constitute criticism of religions or religious doctrines, express dissenting religious beliefs, or express ideas perceived as offensive;
 - iv Merely display insignia, uniforms, emblems, music, flags or signs that are historically associated with discrimination against certain groups, unless they are intended and likely to incite imminent violence.
 - b All incitement cases against individual protesters for their expression during protests should be assessed under a uniform incitement test, consisting of a review of all the following elements:
 - i The broader societal context of the respective expression;
 - ii The intent of the individual to incite discrimination, hostility or violence;
 - iii The position and role of the individual, in particular whether they were in a position of authority and exercising that authority;
 - iv The content, including the form, subject matter or style of a particular expression;
 - v The extent of the respective expression, in particular within the particular protest;
 - vi The likelihood of imminent harm (that is discrimination, hostility or violence) as a result of the respective expression.

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Section III: Obligation to protect the right to protest

Principle 11: State duties to facilitate protests

- 1 States have a positive duty to ensure that individuals may exercise their right to protest. In particular, they should:
 - a Affirm that human rights protections apply in all protests, even where there are individual, sporadic or widespread acts of violence, or where circumstances necessitate specific and temporary restrictions on the right to protest;
 - b Facilitate protests by taking reasonable and appropriate measures to enable protests to take place without participants fearing physical violence or violations of their human rights, while minimising disruption and the risk to the safety of those affected by a particular protest. States should be mindful that in some circumstances where protest occurs in violation of applicable laws, law enforcement powers do not always have to be exercised and non-intervention might be the best approach;
 - c Actively protect protesters, alongside other people, against any form of threat or violence by those who wish to prevent, disrupt or obstruct protests, including agents provocateurs and counter-demonstrators;
 - d Ensure that groups at risk, given their particular vulnerabilities at the time of certain protests, including women, children, members of minorities or people with disabilities as well as those monitoring or reporting on protests, are protected. The measures adopted in this respect, however, should not be misused to confirm stereotypes, maintain discriminatory norms, values and practices, or restrict the ability of these groups to exercise their right to protest. Such measures should include, but not be limited to:
 - i Holistic approaches to tackling discrimination against groups at risk, addressing the sources of discrimination and the comprehensive reform of applicable laws and procedures;
 - ii Immediate means of accessing redress and protection, including legal aid, for all individuals who suffer discrimination and violence;
 - iii Public condemnation by officials of all forms of harassment and violence committed against protesters who are members of groups at risk, and an expressed commitment to protect and respect the right to protest of these groups;

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- iv Effective training for all officials and law enforcement officers in non-discrimination; this should be adequately resourced and include rigorous enforcement and monitoring.

Principle 12: State duty to adopt a human rights approach to policing protests

- 1 In their legislation and binding law enforcement regulations, states should elaborate clear and operationally focused rules on the policing of protests and make these available to the public. Policing of protests should be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and should comply at all times with international human rights law and standards on policing, in particular the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The law enforcement officials should, in particular:
 - a Be clear that their primary duty is to facilitate protests, and this should be emphasised through all aspects of training, planning processes, and the execution and evaluation of operations;
 - b Receive adequate training and other resources so as to be restrained and proportionate in policing protests. Training should include human rights standards and clarify the circumstances in which restrictions can be imposed, the limits of their authority, methods of understanding crowd behavior, and the methods and skills needed in order to minimise and de-escalate conflict, such as negotiation and mediation;
 - c Seek to establish or improve dialogue with the organisers of protests in advance where possible; to create mutual understanding, reduce tensions, evaluate potential risks and conflict escalation and agree how best to facilitate the protest. They should also undertake voluntary debriefings with protesters after an event to assess any issues that may have arisen;
 - d Establish clear law enforcement command structures and well-defined operational responsibilities, as well as points of contact within the law enforcement agency before, during and after protests;
 - e Develop strategies to establish or improve communication with the

public and the media before, during, and after protests to convey an objective and balanced policing perspective on events, and to ensure that protesters and the public can make informed decisions;

- f** Wear regular gear and uniforms; riot or special enforcement gear should be an exceptional measure, used where strictly necessary in light of a full risk assessment, considering the potential for such equipment to be counter-productive to the de-escalation of conflict;
 - g** Clearly display numerals or other individualised identification at all times and refrain from preventing individuals from reading them during protests; any failure by individual officers to comply with this requirement should be dealt with swiftly and robustly. Plain-clothes officers should be required to identify themselves before taking any police action.
- 2** Decisions to disperse protests should be taken as a last resort, in line with the principles of necessity and proportionality, and should be ordered by a competent authority only if an imminent threat of violence outweighs the right to protest.
 - a** Dispersals should never be ordered due to non-compliance with prior notification requirements (if such requirements exist), or failure to comply with other illegitimate prior restrictions on protest;
 - b** Isolated and sporadic acts of violence by individuals within a protest shall not justify the dispersal of a protest;
 - c** Law enforcement officers should be obliged to clearly communicate and explain orders to disperse, so as to obtain, as far as possible, the understanding and compliance of protesters; protesters must be given sufficient time to disperse before there is any recourse to coercive means.
- 3** Crowd-control strategies that temporarily deprive specific individuals of their freedom of movement should be used exceptionally and only if law enforcement officers have reasonable grounds to believe that the individuals being contained are liable to cause violence or serious disturbances elsewhere. Such strategies should not be used to arrest protesters individually or en masse, but only as a form of extremely limited and temporary crowd control, where other means have been exhausted and only for as long as

is absolutely necessary. Where containment is deployed, the police should moderate their impact by ensuring:

- a** Easy access to information for protesters and the public regarding the reason for, anticipated duration of, and exit routes from any police containment;
- b** Clear signposting to basic facilities and amenities as part of the prior planning;
- c** Immediate access to the emergency services, as well as to state and non-state providers of first aid and other forms of assistance and care;
- d** Non-violent protesters and bystanders trapped as a result of the strategy, as well as vulnerable or distressed persons, are able to leave.

Principle 13: State duties regarding the use of force

- 1** States must ensure, in law and in practice, that they resort to the use of force only against violent protests, and only when strictly necessary and in proportion to the threat of violence. The use of force will only be considered necessary where all other means of de-escalation and preventing further violence have been exhausted.
- 2** Any deployment of lethal and less-lethal weapons should be authorised by the highest-ranking official on the site and exercised only by fully trained law enforcement officers subject to effective regulation, monitoring and control. Before using lethal and less-lethal weapons, law enforcement officials should give a clear warning of their intent to do so, with sufficient time for the warning to be observed, unless that would unduly place them or others at risk of death or serious harm, or would be clearly inappropriate or pointless in the circumstances.
- 3** Where the use of less-lethal weapons is unavoidable, law enforcement officials must avoid causing serious injury and minimise harm. In particular:
 - a** Baton blows aimed at the head, neck and throat, spine, lower back, solar plexus, knees, ankles and vital body parts must be prohibited;
 - b** Less-lethal projectile weapons must not be used in a way that poses

a risk of impact to the head, chest or abdomen, and must not be discharged with so much force that they cause perforation of a person's 'body wall' (the external surface of the body, which encases the body cavity) or other unnecessary injury;

- c Where chemical irritants and other forceful or chemical crowd control agents are used, decontamination procedures must be established;
 - d Modification of the chemical composition of any gas for the sole purpose of causing protesters, and indirectly bystanders, severe pain must be prohibited.
- 4 Law enforcement officials must not use lethal force, including firearms, against a protest or to disperse a protest. Such measures must be used only when strictly unavoidable in order to protect life, that is, against individuals either in self-defence or in the defence of others under imminent threat of death or serious injury, or to arrest a person presenting such a danger and resisting arrest, and only when less harmful means are insufficient to achieve these objectives.
- 5 Law enforcement officials must ensure that anyone injured or affected as a result of the use of force receives assistance and medical aid at the earliest possible moment, and must report the incident promptly to superiors who must ensure an effective review carried out by independent administrative or prosecutorial authorities who have the power to exercise authority where appropriate.
- 6 States must establish a system for monitoring the use of force, which must include a requirement for law enforcement officials to report any use of it. Documentation about the use of force should be made available to the public.
- 7 Superior officers who know, or should know, that officers under their command have resorted to the unlawful use of force must be responsible for any violations where they did not take all measures in their power to prevent, suppress or report excessive force.

Principle 14: State duties regarding the use of surveillance on protesters

- 1 Use of surveillance techniques for the indiscriminate and untargeted

surveillance of protesters and the organisers of protests, both in physical space and digital technologies, should be prohibited.

- 2 Law enforcement can only subject individual protesters and organisers to targeted surveillance where there is a reasonable suspicion that they are engaging in, planning to engage in, or about to engage in a serious criminal activity.
- 3 Surveillance should be in line with the test set out in Principle 4 and each use must be approved by a court, be of limited duration and conducted in a manner that is appropriate to achieve the specific legitimate aim identified. The need for surveillance must be frequently reviewed and should cease once the purpose is no longer identified. This requires that states should, at the least, establish the following before the courts and other independent adjudicatory bodies which authorise surveillance, prior to conducting surveillance:
 - a There is a high degree of probability that a serious crime or specific threat to a legitimate aim has been or will be carried out;
 - b There is a high degree of probability that accessing the protected information would lead to relevant and material evidence of a serious crime, or specific threat to a legitimate aim;
 - c Other less invasive measures have been exhausted or would be futile, meaning that the technique used is the least invasive option;
 - d Information accessed will be confined to what is relevant and material to the serious crime or specific threat to an alleged legitimate aim;
 - e Any excess information collected will not be retained, but instead will be promptly destroyed or returned;
 - f Information will be accessed only by the specified authority and used only for the purpose and duration for which authorisation was given.
- 4 All protesters and organisers who are subject to surveillance should be notified of a decision authorising surveillance with enough time and information to enable them to challenge the decision or seek other remedies, and should have access to the materials presented in support of the application for authorisation. Delay in notification is only justified only if:

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- a Notification would seriously jeopardise the purpose for which the surveillance is authorised, or there is an imminent risk of danger to human life;
 - b Authorisation to delay notification is granted by an independent and impartial court, tribunal or other independent adjudicatory body; and
 - c Affected individuals are notified as soon as the risk of danger to human life has passed, as determined by an independent and impartial court, tribunal or other independent adjudicatory body.
 - 5 The obligation to give notice rests with the state, but communications service providers should be free to notify individuals of any communications surveillance, voluntarily or upon request.
 - 6 Identifying data about protesters or organisers gained through surveillance should not be retained or shared unless essential for an ongoing criminal investigation or pending prosecution.
 - 7 While it is legitimate for the police to keep the details of particular investigations confidential, decisions about overall surveillance policies should be openly discussed. The policies and procedures for the use of surveillance technologies in protests should be explicit, written, and made public.
 - 8 In recognition of the fact that recording and image gathering in public areas by law enforcement, Closed Circuit Television (CCTV), Unmanned Aerial Vehicles (UAV) and related technologies, which are used to monitor a variety of environments and activities, might breach the right to protest, states should make sure that:
 - a The use of these techniques is subject to strict regulation;
 - b Bodies using the respective technologies ensure that there is visible notice to the public informing them that they are being, or may be, monitored;
 - c Images of identifiable individuals captured by these technologies should not be retained or shared unless there is reasonable suspicion that the images contain evidence of criminal activity or are relevant to an ongoing investigation or pending criminal trial;

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- d Deployment and policy decisions surrounding these technologies should be democratically decided based on open information;
 - e Investment in these technologies should be made only after a clear, systematic examination of the costs and benefits involved. If such technology is deployed, independent audits should be put in place to track their use.

Principle 15: State duties regarding stop and search, detention or arrests of protesters

- 1 No one should be arbitrarily deprived of their liberty except on such grounds and in accordance with procedures that are established by law, based on reasonable suspicion of the person having committed an offence, or when it is necessary to prevent their committing an offence or fleeing after having done so, without resorting to excessive use of force. In the context of protests:
 - a There should be no mass stops and searches; any stops and searches, including searches of electronic devices, and arrests and detentions of protesters must be individualised and based on particularised facts;
 - b All arrests, detentions and any subsequent trials should be carried out in accordance with both formal and substantive rules of domestic and international law, including the principle of non-discrimination. They should be free from arbitrariness, in that the laws and their application must be appropriate, just and foreseeable, and must comply with the due process of law, including the right to access a lawyer at all stages of the judicial proceedings, the right to adequate time and facilities to challenge the decisions, and the right to cross-examine witnesses.
 - c In case it is necessary to make multiple arrests based on the unlawful conduct of protesters, law enforcement officers should ensure that:
 - i The only individuals arrested are those who are observed to have engaged in unlawful activity, as opposed to simply being in a public area near unlawful activity;
 - ii There are workable models for transporting, booking, holding, feeding, and administering and ensuring the health and safety of any large number of detainees in compliance with international human rights standards;

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- iii Any detention facilities set up specifically for large protest events should have emergency management plans created by policing entities which provide specific instructions as to what constitutes an emergency and what steps should be taken in each scenario. Every person staffing such a facility must be trained in emergency procedures, and appropriate run-throughs should be conducted to ensure the safety and security of staff and detainees.

Principle 16: State duties regarding liability and sanctions against protesters

- 1 Participation in a protest must never be the basis for suspicion of criminal activity. Any preventative arrests must be based on a reasonable suspicion that a criminal offence is planned.
- 2 Sanctions and the imposition of individual criminal and administrative liability regarding offences committed during protests must be applied in narrow and legally prescribed circumstances in line with the test set in Principle 4, upon the decision of an independent and impartial court, tribunal or other independent adjudicatory body in accordance with the rule of law.
- 3 Liability must always be personal, so that neither the organisers nor protesters are subjected to sanctions of any kind on the basis of acts committed by others.
- 4 Organisers and protesters must never be held liable or responsible for covering the costs of the provision of adequate security and safety measures, policing and first-aid services, and the costs of cleaning up after protests. In addition, they must not be required to obtain public-liability insurance for protests.
- 5 States must restrict the possibility of civil law remedies for silencing protesters and obstructing the work of human rights defenders in protests, including strategic litigation against public participation (SLAPP). States should adopt legislation that considers SLAPP to be an abuse of the judicial process which aims to restrict the legitimate exercise of the right to protest.
- 6 States must ensure that any legislation and practice concerning the possibility and application of injunctions against protests by public and private entities, in particular private companies, fully complies with restrictions set out in Principle 4, and also with the requirements of the due process of law. In particular, states should guarantee in their legislation and practice that:

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- a Applications for injunctions relating to protest cannot be made without notice being given to protesters;
 - b Injunctions can be granted only against identified individuals or groups and never *contra mundum*, i.e. against anyone with notice of injunction;
 - c The extent, scope and duration of injunctions should always be carefully balanced so as to give meaningful effect to the right to protest. In determining whether issuing an injunction is necessary and proportionate under Principle 4, the courts or other independent adjudicatory bodies should consider:
 - i Demonstrable evidence of a threat of actual and irreparable harm to the applicant if the injunction were not granted;
 - ii The balance between this harm and the resulting restrictions on the right to protest as a result of granting the injunction;
 - iii The probability of the applicant's success on the merits of his/her claim; and
 - iv The public interest in upholding the exercise of fundamental rights and maintaining the ability of individuals to exercise their right to protest.
 - d Whether the costs of the proceedings and legal fees serve as a deterrent to protesters who seek the amendment or revocation of an injunction;
 - e The adequacy of safeguards against abuse, including compensation paid to the injured party.
- 7 Any restrictions on protests that take the form of non-violent direct action should be based on an individualised assessment in line with the test set in Principle 4. In particular:
- a States should consider that some criminal offences, when applied to non-violent direct action, including but not limited to aggravated trespass or squatting, having a chilling effect on the right to protest. They should be replaced by civil or administrative remedies (where appropriate) in relation to protest;

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- b** Law enforcement should be allowed to exercise discretion in considering whether the strict application of criminal or administrative offences is an appropriate and proportionate form of restriction. Criminal law sanctions should be applied only against non-violent direct action in the most serious cases if less severe restrictions or measures could achieve the same effect;
 - c** Judicial authorities should consider the expressive nature of the conduct as a mitigating circumstance when applying sanctions;
 - d** In determining the proportionality and necessity of restrictions, law enforcement and judicial authorities should employ public interest assessment, taking into account:

 - i** The importance of upholding the exercise of fundamental rights and maintaining the ability of individuals to enjoy their right to protest;
 - ii** The non-violent manner of the expressive conduct;
 - iii** The level of disruption of the expressive conduct;
 - iv** The type of targeted entity; and
 - v** The actual harm caused, with the deciding factor being not whether damage occurred, but whether it was unduly substantial. The test of substantial damage should not be one of mere embarrassment, disruption or discomfort and should be considered in the context and the type of targeted entity;
 - vi** In cases concerning the use of digital technologies for expressive purposes, law enforcement and judicial authorities should also consider whether the targeted entity has any alternative means of communication and the extent to which the protest resulted in a violation of the right to freedom of expression of the targeted entity online.

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Section IV: Obligation to fulfil the right to protest

Principle 17: Accountability and transparency

- 1 States should ensure that all decision-making processes by public authorities relating to protests are transparent, accessible and comply with international due process standards. In particular, they should ensure that the protesters receive timely notice of any regulatory decisions with justified reasons and that they have recourse to prompt and effective remedy through administrative and/or judicial review.
- 2 States should investigate, prosecute, and ensure accountability for human rights violations committed in the context of protests. Investigations and prosecutions must be effective, speedy and carried out by independent judicial or adjudicatory bodies, and capable of bringing perpetrators, instigators and those overseeing violations to account through criminal or disciplinary proceedings as appropriate.
- 3 States must ensure accessible, effective and cost-free remedies for violations of the rights of protesters, in particular through criminal and civil law processes, and should include, *inter alia*, damages, restitution, public apologies, guarantees of non-repetition or precautionary measures, as well as remedies awarded by human rights institutions and/or ombudspersons.
- 4 States should ensure in their legislation and practice that at the very least:
 - a Policing techniques and any use of force during protests is subject to independent, impartial and prompt review, and, where appropriate, investigation and disciplinary or criminal sanction as per paragraph 2;
 - b The use of policing techniques and any equipment, including digital and surveillance tools, used in policing protests, is transparent and open to public scrutiny. States should establish independent inquiries to examine, *inter alia*:
 - i Allegations of injuries caused by the use of less-lethal weapons. Inquiries should include independent medical, scientific, and judicial experts, who study and report on the dangers of less-lethal weapons and make recommendations about the effective regulation and lawful deployment and use of such weapons with a view to increasingly restricting the use of weapons;
 - ii The use of any surveillance technologies, so that the public can

assess the manner and frequency of their use, the justifications for and the necessity and proportionality of that use, and whether they are being used for improper or expanded purposes.

Principle 18: Free flow of information relating to protests

- 1** States should enable the free flow of information relating to protests, including all types of media, so that everyone can freely impart and receive information about protests before, during and after them.
- 2** States should ensure in their legislation and practice that, at the very least:
 - a** All public authorities and law enforcement provide detailed, accurate and comprehensive information about decision-making relating to protests and policing protests. Those with an obligation to disclose information must make information available on request, within the timeframe specified by law, subject only to limited exceptions prescribed by law and necessary to prevent specific, identifiable harm to legitimate interests, as set out in the test in Principle 4;
 - b** There is a proactive disclosure of key information, including the rules and regulations governing the policing of protests, budgets, and evaluation reports. This information should be made available both offline and online in places that make it easy to locate and in formats that permit easy download and reuse of the data;
 - c** All public authorities involved in decision making relating to protests and law enforcement must develop and maintain consistent records relating to their decision-making and the execution of their duties, and ensure this is accessible to public and independent scrutiny.
- 3** States should refrain from imposing measures that regulate or limit the free circulation of information about protests via broadcast and print media, the internet and other communications platforms; any limitations must comply with the requirements set out in Principle 4.

Principle 19: Monitoring of and reporting on protests

- 1 States should allow and actively facilitate reporting on and the independent monitoring of protests by all media and independent observers without imposing undue limitations on their activities and without official hindrance as far as is possible in all locations.
- 2 States should ensure that no individuals documenting police actions and human rights violations during protests are specifically targeted because of covering and reporting on protests. Wilful attempts to confiscate, damage or break related equipment, printed material, footage, audio, visual and other recordings should be a criminal offence and those responsible should be held accountable.
- 3 The photographing or video-recording of the policing of protests and related activities by the media, observers, protesters and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to law enforcement agencies should be subject to prior judicial scrutiny.
- 4 States should establish programmes to allow designated and trained independent observers to gain access to protests for the purposes of observing, documenting, and reporting on the protests. They should also be permitted to remain in the vicinity of protests following the issuing of dispersal orders and granted access to detention facilities, unless there are exigent circumstances.
- 5 In order to ensure the independent coverage and monitoring of protests by the media and independent observers, states should, at the very least:
 - a Refrain from imposing accreditation requirements on the media in order for them to be allowed to cover protests except under rare circumstances in which resources, such as time and space at certain policing operations, are limited;
 - b Assure as extensively as possible the safety of journalists, media workers and observers, including using special protection measures. The need to guarantee safety, however, should not be used as a pretext to unnecessarily limit their rights, in particular their rights to freedom of expression, freedom of movement and access to information;

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- c Fully respect the right of the protection of sources in relation to protests; any restrictions should be subject to the narrow limitations set out under international law;
 - d Ensure that journalists and independent observers are not arrested and detained by law enforcement officers as a result of their lack of credentials; nor should they be arrested as a result of their failure to leave an area once a dispersal order is given unless their presence would unduly interfere with police action;
 - e Make the role, function, responsibilities and rights of the media and observers an integral part of the training curriculum for law-enforcement officers whose duties include the policing of protests.

Section V: Other actors



Principle 20: Protesters and other actors

- 1 Protesters should exercise their right to protest without committing acts of violence against private citizens or state agents.
- 2 Whilst exercising their right to protest, protesters should whenever possible seek to avoid damaging private or public property.
- 3 Organisers of protests should, where possible and without coercion, establish cooperation and partnership with relevant authorities and with law enforcement officials in planning the course of the protests. In cases where public space needs to be booked or where large numbers are expected, organisers should comply with voluntary notifications procedures.
- 4 Organisers should consider designating individuals with whom the authorities can liaise in order to facilitate the protests, and deploy clearly identifiable stewards to help facilitate the holding of protests and ensure compliance with any lawfully imposed restrictions.
- 5 Journalists and independent observers should identify themselves clearly as such, and should report objectively on events in compliance with ethical journalism standards and ethical standards on the monitoring of protests.
- 6 The methods of identification for journalists and independent observers should be clearly recognisable by law enforcement agencies and other actors, preferably agreed through an open and consultative process between law enforcement agencies, journalist unions and civil society.

Background

The Right to Protest Principles are part of ARTICLE 19's International Standards Series, an ongoing effort to elaborate in greater detail the implications of protecting and promoting the right to freedom of expression in different thematic areas.

They are the result of a process of study, analysis and consultations, drawing on the extensive experience and work of ARTICLE 19's regional offices and partner organisations in many countries around the world. An original draft of the Principles was elaborated following the meeting of experts in London on 15 and 16 May 2014.

Following this meeting and further consultations, ARTICLE 19 drafted the Consultative Version of the Principles in several languages that were available for comments and discussion on the Right-to-Protest.org website in a period of June – November 2015. Civil society organisations, activists, policy makers, academics, media and all other stakeholders were invited to feedback on the draft and the final version of the Principles was produced on the basis of these consultations.

An abstract graphic consisting of numerous thin, white, intersecting lines of varying lengths and angles, creating a complex web-like pattern against a solid teal background. The lines are more densely packed in the upper half of the image and become sparser towards the bottom.

DEFENDING FREEDOM OF EXPRESSION AND INFORMATION

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