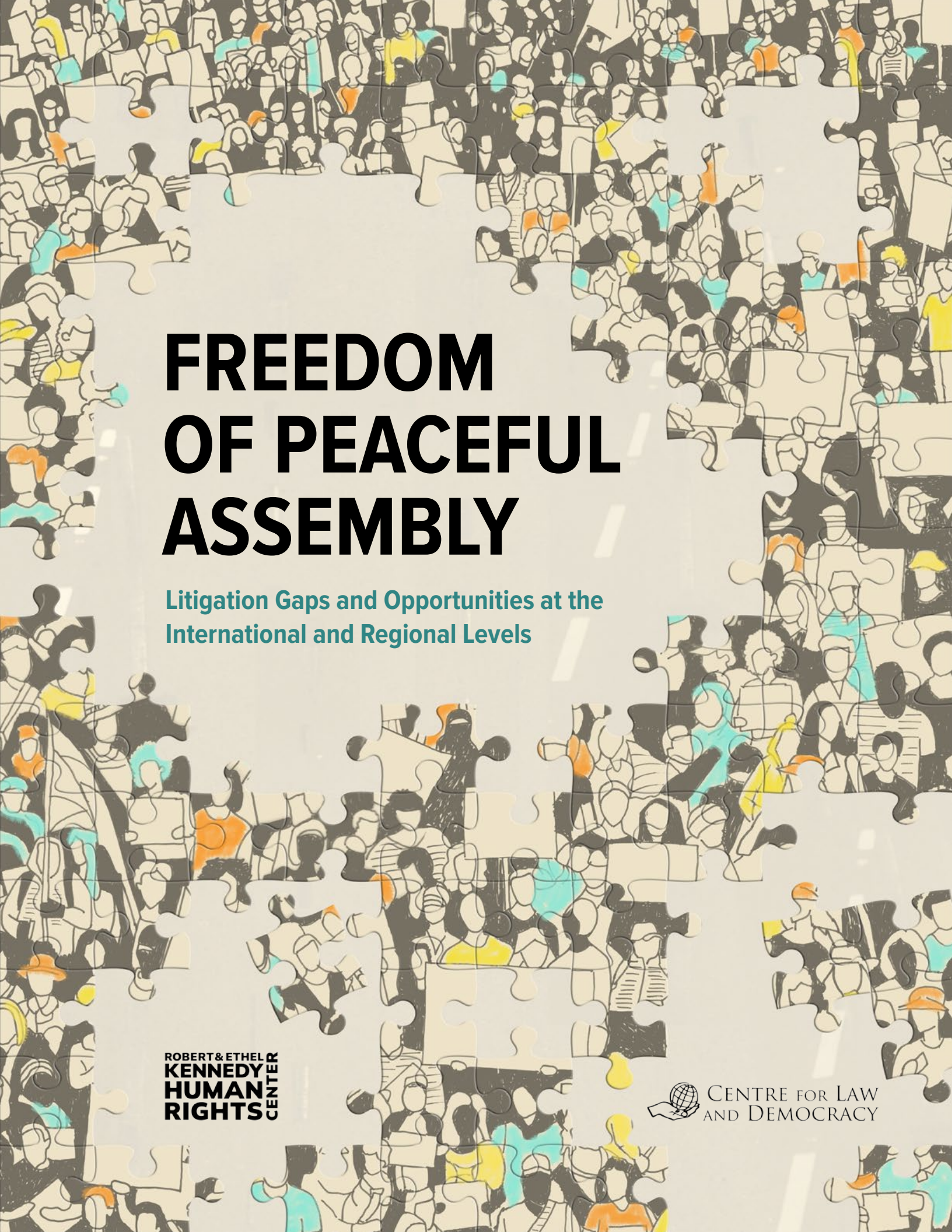


FREEDOM OF PEACEFUL ASSEMBLY

Litigation Gaps and Opportunities at the International and Regional Levels

ROBERT & ETHEL KENNEDY HUMAN RIGHTS CENTER

CENTRE FOR LAW AND DEMOCRACY

FREEDOM OF PEACEFUL ASSEMBLY:

Litigation Gaps and Opportunities at the International and Regional Levels

ISBN: 979-8-9932511-0-3
Cover and report design by Eva Fontana

Robert and Ethel Kennedy Human Rights Center is a nonprofit organization created in 1968 to carry on Senator Robert F. Kennedy's unfinished work in pursuit of a more just and peaceful world. Robert and Ethel Kennedy Human Rights Center advocates for human rights and social justice, engages in public education, and pursues strategic litigation to hold governments accountable at home and around the world.

For more information, please visit our website at: https://rfkhumanrights.org

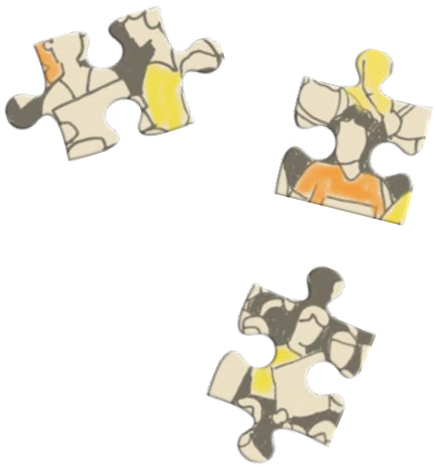
The Centre for Law and Democracy (CLD) is an international human rights organization based in Canada and providing expert legal services globally. We work to promote, protect and develop those human rights which serve as the foundation for or underpin democracy, including the rights to freedom of expression, to vote and participate in governance, to access information, and to freedom of assembly and association.

For more information, please visit our website at: https://www.law-democracy.org

ACKNOWLEDGMENTS

This Report was authored by Toby Mendel, Executive Director of the Centre for Law and Democracy (CLD), with research support from Laura Notess, Senior Legal Officer, CLD and CLD placement students Essber Essber and Sahar Fatima. The original version was developed as an internal working document for Robert and Ethel Kennedy Human Rights Center. This was edited into a public version by Sofia Jaramillo and Angelita Baeyens, Robert and Ethel Kennedy Human Rights Center, and Toby Mendel, CLD.

TABLE OF CONTENTS



SUMMARY

This report provides an in-depth assessment of the standards relating to freedom of peaceful assembly, on the one hand, and the extent to which those standards have or have not been affirmed by the target human rights mechanisms, on the other. The latter are, specifically, mechanisms at the UN level – Human Rights Committee (HRC or UN HRC) – in Africa – African Commission and Court on Human and Peoples' Rights (ACmHPR and ACtHPR), the Economic Community of West African States (ECOWAS) Court of Justice (ECOWAS Court) and the East African Court of Justice (EACJ) – and in the Americas – Inter-American Commission on Human Rights (IACmHR) and Court of Human Rights (IACtHR). The report thus provides a comprehensive mapping of where gaps remain in the jurisprudence of the target mechanisms. The primary aim is to support the planning of strategic litigation to address those gaps. The report relies on the jurisprudence of the European Court of Human Rights (ECtHR) to identify key freedom of assembly standards, but it does not assess gaps in the litigation of that mechanism.

The overall picture from the report is one primarily of gaps. Only 49 cases have been decided by the eight jurisdictions covered, and many of these come from the same country or region and cover the same issues (for example, 29 of the cases come from Belarus, Russia and Kazakhstan, and all focus on rules requiring advance notification of assemblies to be provided). Many of the cases also focus primarily on other rights, allocating only limited space to freedom of assembly. As a result, there is ample choice for those wishing to engage in strategic litigation on freedom of assembly and the harder issue may be how to prioritize given the choice available.

1. OVERVIEW OF GAPS

1.1. Scope of the Right

The jurisprudence of the target mechanisms establishes clearly as a general principle the broad scope of freedom of assembly, which applies to everyone and covers a wide range of types of assemblies – such as online, at sea, moving, static or even via a hunger strike, and spontaneous or planned. Like freedom of expression, a wide range of expressive purposes of assemblies is protected including, for example, where the aim is to change the law. It is also clear that engaging in minor (non-violent) illegal acts during assemblies – such as blocking traffic – remain protected. And violence on the part of some participants does not necessarily deprive an assembly of protection, although this may be the case where the violence is widespread, where organizers intended violence to occur or where the authorities cannot control the violence.

Key gap-filling needs:

- Limits on the right of officials to participate in assemblies
- The right not to participate and whether organizers have a right to exclude individuals who are projecting counter-messages from an assembly
- Whether assemblies which promote banned forms of expression, such as hate speech, or which aim to prevent others from exercising the right (counter-demonstrations) are protected
- Clarity on when an assembly is no longer peaceful and hence no longer protected
- Clarity on what sorts of illegal behavior (short of violence or destruction of property) are not allowed

1.2. Positive State Obligations

The jurisprudence places a number of positive obligations on States in the context of freedom of assembly. These encompass the need to put in place an enabling legal framework, including as to the use of force (i.e. the rules on when this is allowed and how it should take place), to provide training to law enforcement officers policing assemblies, to provide facilitation for assemblies (e.g. via traffic management), and to provide protection to assemblies which are being attacked, as needed, especially for disadvantaged groups.

Key gap-filling needs:

- Clarity on the obligation to put in place an enabling legal framework
- Clarity on the obligations to facilitate and provide security for assemblies
- Clarity on States' (and citizens') obligations to tolerate disruption (for example to traffic or from noise)
- Clarity on the obligation to raise awareness about freedom of assembly

1.3. Restrictions

1.3.1. General Test for Restrictions

International law establishes a three-part test for restrictions on freedom of assembly, namely that the restriction must be: 1) in conformity with the law; 2) in the interests of one of a list of protected values; and 3) necessary in a democratic society. For the first part, it is not enough merely to have a law; the law must be clear and not vague. The necessity part of the test involves various elements, including that the means used are the least restrictive means available and that the restriction is proportionate. Absolute or prior bans, or limiting assemblies to one location, are presumptively invalid. Once an interference with the right is established, the onus is on the State to justify that interference.

1.3.2 Notice

Notification regimes can support freedom of assembly by helping authorities plan in advance such acts as traffic control, security and the provision of medical services. But they are not legitimate if they are used as authorization regimes, where they are unduly bureaucratic or obstructionist, or where they are intended to be used to impose liability on organizers subsequently (i.e. for failing to obtain advance authorization).

1.3.3 Time, Manner, Place Restrictions

It is well established that, normally, freedom of assembly includes the right to conduct an assembly within sight and sound of the target of the assembly, even if that involves disruption of normal activities in that location (such as blocking a road). Refusal of a preferred location or changing a location is legitimate only following a concrete risk assessment leading the authorities to conclude that they are clearly or manifestly unable, despite making a significant effort, to ensure security without the changes.

1.3.4. Use of Force

The use of force against participants in an assembly should only be used as a last resort following an outbreak of violence and after attempts to de-escalate have failed. The use of force should always be proportionate and should normally be directed only at those posing a risk to others. Proportionality implies having in place a clear command structure, well-trained officers and the availability of a range of weapons, depending on the circumstances, with the use of live ammunition being warranted only in highly exceptional circumstances where every other option has failed.

1.3.5. Other Issues

Another key issue is the rules around dispersal of assemblies, which is normally legitimate only in three cases: where violence is out of control; where the assembly itself is no longer protected; and to provide proportionate protection for the rights of others, normally due to the length of an assembly. A mandatory dispersal should be communicated clearly, individuals should be given an opportunity to leave, force should be used only if necessary (and then proportionately) and actors like journalists, observers and medical personnel should not be subject to the dispersal. Other issues include that preventing people from arriving at an assembly needs to be strictly justified, that mass arrests are never legitimate and that organizers are not normally responsible for the acts of others (unless they are complicit in them).

Key gap-filling needs:

- Further elaboration of the standards relating to "in conformity with the law"
- Further elaboration of legitimate interests, including morality, public order, public safety and national security
- Further clarity on how to balance freedom of assembly with the rights of others, including for longer duration and repeated assemblies
- Clarity on when notification regimes are unduly onerous or become authorization regimes, as well as other standards for them (such as transparency and timely responses)
- When it may be legitimate to impose sanctions on organizers for failing to comply with notification regimes
- When States may change or even ban assemblies, including on grounds of security
- Further clarity on the rules on the use of force, including exhaustion of non-violent measures, the use of wide-area weapons and firearms, and when it may be legitimate to employ military actors
- Further elaboration of standards on the use of other measures such as preventing individuals from arriving at assemblies, searching individuals and confiscating "weapons", and kettling
- Further elaboration of standards relating to dispersal of assemblies, including when this is legitimate, conditions on doing it and the treatment of different actors (such as monitors and medical staff)

1.4. Accountability and Redress

There should be a clear framework of accountability for willful breaches of freedom of assembly, including the unwarranted use of force. This should include timely access to appeals against restrictions, including measures which are imposed prior to a planned assembly. While the courts should be the final arbiters of such disputes, access to more rapid complaints mechanisms, such as a human rights institute, can be useful. States should also conduct investigations of allegations of serious breaches of freedom of assembly, as well as all cases where force is used on a widespread basis during an assembly.

Key gap-filling needs:

- Clarity on the need for a clear framework of accountability for willful obstruction of freedom of assembly
- Clarity on appeal rights, including timely oversight of measures before planned assemblies and appeals to independent administrative oversight bodies
- Clarity on the obligation to investigate allegations of serious breaches of freedom of assembly, including cases of widespread use of force

1.5. Private Sector Responsibilities

It is clear that private parties have human rights responsibilities and that these extend to freedom of assembly. Specifically, they include allowing staff to participate in assemblies, tolerating the disruption caused by assemblies and not taking specific action to undermine freedom of assembly (such as where communications providers selectively block communications aimed at organizing an assembly). There is some suggestion that private actors should accommodate assemblies on private property which is either always publicly accessible (such as private roads) or normally publicly accessible (such as shopping malls), subject to certain conditions.

Key gap-filling needs:

- Clarity on the full gamut of responsibilities of private parties in relation to freedom of assembly, including allowing staff to participate and not undermining the right, as well as the extent to which private parties should allow assemblies on private property

2. STRATEGIC CONSIDERATIONS

A number of key strategic considerations arise when planning litigation to advance freedom of assembly. One is whether the main aim is to develop the global corpus of standards in this area or to develop the jurisprudence of a particular mechanism (which will to some extent determine the precise focus of the litigation). Another is that more fact-dependent standards – such as how far it is necessary to tolerate the disruption caused by an assembly or when an assembly loses its peaceful character – will require a number of cases to clarify the issue, in contrast with some other issues, such as whether legal entities enjoy the right. A more significant effort will be needed for the former. It may also be difficult to get courts to focus on freedom of assembly in some cases, for example where claims of excessive force are involved and other rights violations seem more egregious. All of these considerations are relevant when trying to forge a litigation strategy.

3. ASSESSMENT BY JURISDICTION

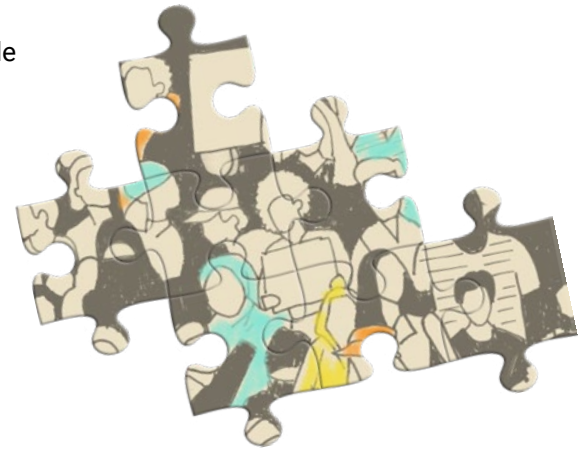
The jurisprudence of the UN HRC in the area of freedom of assembly is very limited, meaning that there is wide scope for further development. Challenges here are that the information on pending cases is very limited and the procedures for third party interventions (amicus curiae briefs) are just being developed. On the other hand, the HRC has also adopted General Comment No. 37 on freedom of assembly, giving us some insight into how its decisions are likely to be developed.

The African mechanisms covered by this report have established some important standards relating to freedom of assembly but, so far, these are mostly very general in nature, meaning that there remains wide scope for further development of standards among these mechanisms as well. And the content of the Guidelines on Freedom of Association and Assembly in Africa, adopted by the ACmHPR, suggests that there is scope for positive elaboration of standards in this region. At the same time, most of the freedom of assembly cases pending before mechanisms in Africa also involve claims of other rights violations, so it is not clear how prominently freedom of assembly will feature in the final decisions. As such, it may be necessary to work toward getting more cases on this issue before these mechanisms.

The jurisprudence of the Inter-American mechanisms addresses a wider range of issues relating to freedom of assembly but there are many areas where standards still need to be developed further. There are also quite a few pending cases before these mechanisms, raising a wide range of freedom of assembly issues, thus offering strong potential for strategic litigation interventions. At the same time, despite the fact that issues relating to land ownership and use, Indigenous peoples' rights and the environment are prominent across Latin America, these issues feature only in a limited way among the freedom of assembly cases decided or pending in the regional mechanisms, such that it might be interesting to try to develop these areas further.

4. CONCLUSION

The report identifies a large number of gaps in the jurisprudence of the target mechanisms, as outlined above. This long list, combined with the significant number of jurisdictions involved, means that strategic choices will need to be made by those wishing to make litigation interventions in this area. Hopefully this report will provide some insight and guideance to those wishing to do so.



INTRODUCTION

This report provides an assessment of the extent to which various international, regional and subregional human rights mechanisms have established key standards relating to the right to freedom of peaceful assembly, and seeks to identify where gaps remain. The aim of this assessment is to serve as a tool for civil society organizations in planning their litigation and research strategies. It can also be used to support other stakeholders to better protect and guarantee freedom of peaceful assembly, including inter-governmental human rights mechanisms and national courts.

The jurisdictions which are analyzed in this report are: the UN Human Rights Committee (HRC or UN HRC), the Inter-American Commission on Human Rights (IACmHR) and Court of Human Rights (IACtHR), the African Commission and Court on Human and Peoples' Rights (ACmHPR and ACtHPR), the Economic Community of West African States (ECOWAS) Court of Justice (ECOWAS Court) and the East African Court of Justice (EACJ).

While the European Court of Human Rights (ECtHR) has adjudicated a significant number of freedom of peaceful assembly cases, this is far less true of the jurisdictions analyzed in this report. Thus, the full list of jurisprudence identified for this report includes 33 relevant cases decided by the HRC, 9 cases by the IACmHR and IACtHR, 5 cases by the ACmHPR and one by the ACtHPR, two cases by the ECOWAS Court and no cases from the EACJ, representing a grand total of just 49 cases.[1]

Even these rather low figures belie the sparseness of the jurisprudence of the international and regional human rights mechanisms (mechanisms) in terms of generating standards on freedom of assembly. For example, from among the 33 cases at the HRC, more than one-half, 18, were from Belarus and another 11 were from Russia and Kazakhstan, leaving just 4 others. Almost all of the cases from Belarus, Russia and Kazakhstan focused on a narrow band of issues relating to notification, such as being refused permission to hold an assembly, or being sanctioned for holding an assembly for either not meeting the notification requirements or not applying for notification. From the 142 pending cases involving freedom of assembly issues before the HRC, 122 (86%) are from Belarus and 6 are from Russia.

Many of the cases also involve claims of breaches of other human rights. Claims of a breach of freedom of assembly are very often accompanied by claims about breaches of freedom of expression, which is a closely related right, but in some cases the claim about a breach of freedom of assembly is just one of many rights claims. In at

1 Full Jurisprudence Table, https://rfkhumanrights.org/wp-content/uploads/2025/10/Cases-FoA-Report.docx.pdf

least some cases, this led to the mechanism treating the freedom of assembly claim rather briefly, as it was not deemed to be the primary issue in the case. As perhaps an extreme but illustrative example of this, in the case of *International Pen, Constitutional Rights Project, Civil Liberties Organisation and Interights (on behalf of Ken Saro-Wiwa Jnr.) v. Nigeria*,[2] before the ACmHPR, the complainants alleged breaches of nine different rights protected by the *African Charter on Human and Peoples' Rights*,[3] including freedom of assembly, all of which were upheld. The Commission just allocated one paragraph to its substantive discussion of freedom of assembly.

Another example is the case of *Baena-Ricardo et al. v. Panama*,[4] before the IACtHR. In that case, the Commission alleged a breach of six substantive rights, including freedom of assembly, stating that workers at State entities, by demonstrating peacefully in an open-air location, did not commit any illegal acts, as such demonstrations were authorized by law and required only the provision of 24-hour notice to authorities. Their dismissal for participating in this lawful assembly was deemed to be a violation of the rights in the *American Convention on Human Rights*.[5] The Court found breaches of four substantive rights, not including freedom of assembly. The Court devoted only three paragraphs to its substantive discussion of freedom of assembly, which essentially held that no persuasive evidence had been presented of a breach of this right.

In some jurisdictions, like the HRC, we were able to find a reasonably complete list of pending cases[6] but the information about them is so scant – often just a few words – that it is not possible to predict, beyond that they address freedom of assembly, what issues they may cover. For other mechanisms, more detailed information is available.

While a small number of the 49 cases from the target jurisdictions did probe more deeply into substantive freedom of assembly issues, the overall picture emerging from the jurisprudence is one of significant gaps rather than a robust latticework of standards with a few remaining gaps to be filled. As such, an important factor to consider when deciding on a litigation strategy, whether overall or for a particular jurisdiction, is which of the many existing gaps are deemed to be more important to fill, since strategic choices will presumably need to be made, given various limits, importantly on resources but also of a practical nature (such as the time it takes to get a case to the hearing stage by a mechanism).

2 Communications Nos. 137/94, 139/94, 154/96 and 161/97, 31 Oct. 1998, https://www.refworld.org/cases,ACHPR,3ae6b6123.html.

3 Adopted 27 June 1981, entered into force 21 October 1986.

4 Ser. C, No. 72, 2 Feb. 2001, https://www.corteidh.or.cr/docs/casos/articulos/seriec_72_ing.pdf.

5 Adopted 22 November 1969, entered into force 18 July 1978. IACmHR, Case filed before the IACtHR against the Republic of Panama, Case no. 11.325- workers dismissed by Law 25N of 1990, 16 January 1998, para. 183, https://www.oas.org/es/cidh/decisiones/corte/2004-1986/78.%20Baena%20Ricardo%20y%20otros,%20Panam%C3%A1.pdf.

6 Available at https://www.ohchr.org/en/treaty-bodies/ccpr/individual-communications.

The first section of this report provides an overview of gaps which exist across all of the target jurisdictions. This aims to provide both a broad view of the gaps which need to be filled internationally (although this does not take into account the far more developed ECtHR jurisprudence) and background to understand more clearly the specific gaps in each of the target jurisdictions. This is followed by a section on strategic considerations, which provides an assessment of issues such as which gaps need more urgent attention due to the frequent breach by States of those standards in the current global environment, as well as which sorts of gaps are more amenable to being resolved via litigation, including in which jurisdictions. The next section provides an assessment by jurisdiction, broken down into the HRC (along with a few cases from two other mechanisms),[7] Africa and the Americas. The report ends with a conclusion, setting out its main findings and recommendations. An explanation of the methodology used for the report is included in the Annex.

7 The other jurisdictions include one case from the Permanent Court of Arbitration and a few from the UN Working Group on Arbitrary Detention.

1. OVERVIEW OF GAPS

This section provides an overview of the general gaps which are found across all of the mechanisms canvassed in this report. As explained in more detail in the methodology in the Annex, the background research for this report involved the development of a Peaceful Assembly – Classification Guide (Classification Guide), setting out key standards relating to freedom of assembly. This section is divided into five main sub-sections, aligning with the sub-sections of the Classification Guide, namely Scope of the Right, Positive State Obligations, Restrictions, Accountability and Redress, and Private Sector Responsibilities. Each sub-section starts by providing the excerpt from the Classification Guide relating to that sub-section, so as to orient readers as to the content which is covered.

1.1. SCOPE OF THE RIGHT

The main issues relating to this topic in the Classification Guide are:

a. Core characteristics

1. Basic features (e.g., collective nature, right not to participate, who is covered, content neutral, online assemblies, counter-demonstrations)
2. Time, place, manner features (including temporal scope of protection)
3. Other features (e.g., special protection for political expression, no need to pay a fee, protection even if legal formalities not complied with)

b. Limits on scope of protection

1. Does not extend to non-peaceful assemblies (e.g., should be presumed, when intent of organizers qualifies as violent, nature of violence covered, conditions for loss of peaceful status, for assembly and for individual participants)
2. Other limits (e.g., dissemination of illegal content, but not for changes to the law)

c. Relationship with incidental rights (as needed to affect an assembly, interpretive support)

Overall, the jurisprudence from the target mechanisms contains quite a few broad, positive statements about the scope of freedom of assembly. These include statements in many of the cases about how everyone is protected under freedom of assembly, with reference to different types of actors (such as journalists, members of political parties, human rights defenders and so on) and that it should be respected without discrimination.

The scope of limits on participation in assemblies by officials, however, is not very well developed. In one case, *López Lone et al. v. Honduras*, IACtHR, the right of judges to protest was upheld, with the Court making it clear that freedom of assembly applied regardless of one's profession.[8] However, the Court recognized that, in general, it was not inappropriate to restrict judges from engaging in political activities but, in the very particular context of this case, which was a coup d'état, the Court stated: "[It] would be contrary to the independence inherent in the branches of State, as well as the international obligations of the State derived from its membership of the OAS, that judges could not speak out against a *coup d'état*."[9] Beyond this context, it did not set out any clear standards for judges and assemblies. There are no other cases in any of the target jurisdictions setting out the reasonable limits on this right for other types of officials.[10]

Three cases from the HRC rule out protection under this right in the case of a lone actor, while still recognizing that other rights may be engaged in these cases. This does not seem unreasonable although the situation where one person is physically present at an assembly but is representing others has not been addressed in the jurisprudence. On this particular issue, the OAS Special Rapporteur for freedom of expression has noted that "spontaneous protests are also a legitimate form of expression, denunciation, protest, or support for various events" and that they "may involve a single person".[11]

The cases also establish that the right applies to a range of actors who participate in different ways in assemblies, such as through organizing, researching, reporting, assisting with medical support and so on (see, for example, *Women Victims of Sexual Torture in Atenco v. Mexico*).[12] Organizing a demonstration online is also

8 Ser. C. No. 302, 5 Oct 2015, para 169, https://www.corteidh.or.cr/docs/casos/articulos/seriec_302_ing.pdf.

9 Ser. C. No. 302, 5 Oct 2015, para 174, https://www.corteidh.or.cr/docs/casos/articulos/seriec_302_ing.pdf.

10 In *Enerji Yapı-Yol Sen v. Turkey*, Application No. 68959/01, 21 April 2009, the ECtHR held that a general ban on the right of civil servants to strike was not legitimate, even if it might be legitimate to prohibit certain categories of civil servants from striking. See para. 32. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-92267%22]}

11 Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*, September 2019, p, 6, https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf. It is not entirely clear from this language, however, whether the Special Rapporteur is specifically claiming that, in general, single person assemblies are protected by freedom of assembly.

12 IACtHR, Ser. C. No. 371, 28 Nov. 2018, para. 172, https://www.corteidh.or.cr/docs/casos/articulos/seriec_371_ing.pdf.

protected (see *Tolchin v. Belarus*).[13] However, there is little in the jurisprudence that spells out the different sorts of protection which different actors are entitled to. For example, external actors such as journalists, CSO observers and medical support workers should not generally be subject to dispersal even if it is otherwise legitimate to disperse an assembly (for example where the assembly, as such, becomes violent and is therefore no longer protected).

In one case, *Registered Trustees of Faculty of Peace Organisation & 3 Ors v. Nigeria,* the ECOWAS Court held that this right, unlike certain other rights, including freedom of expression, does not cover legal entities.[14] This again does not seem unreasonable, based on the idea that actual participation in an assembly is an act to be undertaken by an individual human being. However, one might also take the position that individuals could represent a legal entity which itself also warranted protection. This could, for example, be of particular importance to trade unions[15] and also CSOs which wanted to use protests as a form of advocacy.[16] The position of the ECOWAS Court also fails to take into account a situation where a State sanctioned a union or CSO for organizing an assembly. These issues have not been addressed by other mechanisms.

The jurisprudence also establishes fairly well that assemblies which take place in different ways and locations are all protected. Thus, cases involve assemblies at sea (*The Arctic Sunrise Arbitration (Netherlands v. Russia)*),[17] spontaneous assemblies (see, for example, *Kulumbetov v. Kazakhstan*)[18] and even an assembly conducted by way of a hunger strike (*Ameziane v. United States of America*).[19] There are also quite a few general statements which supplement these ideas (for example, in *López Lone et al. v. Honduras*,[20] the IACtHR, indicated that private assemblies as well as static and moving assemblies are covered, while many HRC cases indicate that one normally has the right to assemble within sight and sound of one's target audience, such as, for example, in *Turchenyak et al. v. Belarus*).[21]

13 HRC, Communication No. 3241/2018, 27 Jul. 2022, https://juris.ohchr.org/casedetails/3578/en-US.

14 ECW/CCJ/JUD/06/22, 21 Mar. 2022, para. 29, https://africanlii.org/en/akn/aa-au/judgment/ecowascj/2022/4/eng@2022-03-21.

15 See, for example, IACtHR, *Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to Other Rights, With a Gender Perspective*, 5 May 2021, Advisory Opinion 27/21, para, 140, were the Court noted that "the right of assembly, as a right that protects people's ability to gather together, is essential to the exercise of freedom of association and freedom to organize and a crucial factor for trade unions to be able to conduct their activities."

16 The European human rights organs have often upheld the right of legal entities to freedom of assembly. See for example, *Christians against Racism and Fascism v. the United Kingdom*, 16 Jul. 1980, Application No. 8440/78, para. 4, in which the European Commission on Human Rights noted: "It is moreover a freedom capable of being exercised not only by the individual participants of such demonstration, but also by those organizing it, including a corporate body such as the applicant association," https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-74286%22]}

17 Permanent Court of Arbitration, The Arctic Sunrise Arbitration (Netherlands v. Russia) - Award on the Merits, 15 Aug. 2014, https://pca-cpa.org/en/cases/21/.

18 HRC, Communication No. 2547/2015, 6 Nov. 2020, para. 8.3, https://juris.ohchr.org/casedetails/3260/en-US.

19 IACmHR, Report No. 29/20, Case 12.865, 22 Apr. 2020, https://www.oas.org/en/iachr/decisions/2020/uspu12865en.pdf.

20 Ser. C. No. 302, 5 Oct 2015, para. 167, https://www.corteidh.or.cr/docs/casos/articulos/seriec_302_ing.pdfI.

21 Communication No. 1948/2010, 24 Jul. 2013, para.7.4, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR%2FC%2F108%2FD%2F1948%2F2010&Lang=es.

Those conducting assemblies should not be subjected to unduly bureaucratic requirements, including requirements to arrange and pay for security and the like (*Belenky v. Belarus*).[22]

In *Ethiopia Electorate v. Ethiopia*, the ACmHPR indicated: "States must strike a balance between their responsibility to ensure that any undue bureaucratic obligations do not restrict the right to organize peaceful assembly and must further ensure that freedom is enjoyed in practice."[23] And it has been clarified that assemblies which promote controversial ideas or even those which press for changes to the law (i.e., advocate for something which is presently illegal) are protected (see, for example, *Amelkovich v. Belarus*).[24] Furthermore, as with freedom of expression, assemblies which seek to convey political messages benefit from heightened protection (*Vasilevich and Ors v. Belarus*).[25] The cases have not yet, however, addressed a situation where an assembly sought to convey a message which constituted a banned form of expression, such as hate speech or propaganda for war, which the ECtHR and authoritative statements suggest would fall outside of the scope of protection.

A number of the cases address, albeit in a somewhat general way, the issue of when an assembly loses (or does not lose) its peaceful characteristic so that the assembly, as such, is no longer protected.

In *Jennifer Williams and Others (represented by Zimbabwe Lawyers for Human Rights) v. Zimbabwe*, the ACmHPR set out a number of conditions for ongoing protection, such as that the organizers "have expressed peaceful intentions" and the conduct of the participants "is generally peaceful", but this is too general to provide clear guidance as to this important issue.[26] In *Tavares Pereira and Others v. Brazil*, the IACtHR spent some time on this issue. The Court made it clear that the mere fact that demonstrators carry objects which could be used for violent ends is not enough to deprive the assembly as a whole of protection or to justify preventing it.[27] On the other hand, where a general intention to use violence or incitement to violence is verifiable or has been expressly promoted by the organizers, the assembly can no longer be considered to be peaceful. In that case, the Court also indicated that,

22 HRC, Communication No. 2860/2016, 8 Jul. 2022, para. 9.4, https://juris.ohchr.org/casedetails/3685/en-US.

23 ACmHPR, Ethiopian Electorate (represented by Robert and Ethel Kennedy Human Rights Center and Institute for Human Rights and Development in Africa) v the Federal Democratic Republic of Ethiopia, Communication No. 599/16, 1 Nov. 2023, para. 210, https://rfkhumanrights.org/wp-content/uploads/2024/08/Right-to-Vote-Decision.pdf.

24 HRC, Communication No. 2720/2016, 29 Mar 2019, para. 6.6, undocs.org/en/CCPR/C/125/D/2720/2016 https://undocs.org/en/CCPR/C/125/D/2720/2016.

25 HRC, Communication Nos. 3002/2017, 3084/2017, 2693/2015, 2898/2016, 14 Mar. 2023, para. 7.5, https://juris.ohchr.org/casedetails/3841/en-US.

26 Communication 446/13, 1 Feb. 2021, para. 152, https://rfkhumanrights.org/wp-content/uploads/assets/WOZA-Case-_-ACHPR-Full-Decision-compressed-2.pdf.

27 16 Nov. 2023. Ser. C No. 507, para. 98, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf.

where the State is unable to provide the required protection, it may be justified in postponing or relocating the assembly, but it did not go into any detail as regards this issue.[28] The same Court, in *Women Victims of Sexual Torture in Atenco v. Mexico*, also made it clear that "[a]cts of sporadic violence or offences by some should not be attributed to others whose intentions and behavior remain peaceful in nature."[29] These standards are helpful but further elaboration of this issue, including as to at what point in a dynamic context where an initially peaceful assembly is turning violent it loses protection, would be useful. In addition, the cases fail to establish that minor violence acts – such as pushing and shoving – do not deprive an assembly or even those engaged in them of protection.

It is, at the same time, clear from the jurisprudence that those involved in an assembly are not responsible for violent reactions of external parties and that this is not generally grounds to prevent or disperse an assembly (see, for example, *Kulumbetov v. Kazakhstan*[30] and below under Positive State Obligations).

Beyond the issue of violence, the cases establish in a general way that engagement in (relatively minor) criminal acts, where these are of a nature which are "commonly observed in protests" may be included within the scope of protection afforded by freedom of assembly (see, for example, José Martín Suazo Sandoval and Others v. Honduras[31]).

The ECtHR has developed the term "reprehensible act" to refer to behavior which is not only generally illegal but goes so far as to no longer enjoy the protection of freedom of assembly (see, for example, *Makarashvili and Others v. Georgia*).[32] The cases from the target jurisdictions do not, however, clarify the exact scope of this and when behavior becomes "reprehensible".

28 IACtHR, Tavares Pereira et al. v. Brazil, 16 Nov. 2023. Ser. C No. 507, para. 99, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf.

29 Ser. C. No. 371, 28 Nov. 2018, para. 175, (see also para. 160), https://www.corteidh.or.cr/docs/casos/articulos/seriec_371_ing.pdf.

30 HRC, Communication No. 2547/2015, 6 Nov. 2020, para. 8.4, https://juris.ohchr.org/casedetails/3260/en-US.

31 IACmHR (Admissibility), Petition 1032-14, Report No. 7/23, Admissibility 15 Feb. 2023, para. 24, https://www.oas.org/en/iachr/decisions/2023/HNAD_1032-14_EN.PDF.

32 ECtHR, Application Nos. 23158/20, 31365/20, 32525/20, 1 Sep. 2022, para. 87, https://hudoc.echr.coe.int/eng?i=001-218940.

Some issues which are not addressed at all in the jurisprudence include the following:

- The right not to participate
- The right of organizers to exclude participants whose message runs counter to the message they wish to convey
- Limits on the right to organize counter-demonstrations where the aim of this is to deny the rights of others to demonstrate
- Issues relating to longer-duration and repeated assemblies
- The question of limits to assemblies, such as whether assemblies which lack any proper expressive purpose – such as people leaving a sports event together or queuing for a bus – are protected

Quite a few of the cases refer to links between freedom of assembly and other rights, most commonly freedom of expression (see *Alekseev v. Russian Federation*).[33] In *Ethiopian Electorate v. Ethiopia* the ACmHPR reiterated its jurisprudence regarding the close link between freedom of expression and assembly and stated that "restrictions on one of these rights can also affect the other, creating a "chilling effect" on people's ability to express themselves and gather peacefully and freely."[34] The jurisprudence also addresses the link of freedom of assembly and freedom of association (*Oscar Elías Biscet et al. v. Cuba*),[35] political rights (*Castañeda Gutman v. Mexico*),[36] the right not to be detained (*Women Victims of Sexual Torture in Atenco v. Mexico*),[37] and the rights to liberty and security (*Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*).[38]

33 HRC, Communication No. 1873/2009, 25 Oct. 2013, para. 9.3, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR%2FC%2F109%2FD%2F1873%2F2009&Lang=en.

34 Communication No. 599/16, 1 Nov. 2023, para. 223, https://rfkhumanrights.org/wp-content/uploads/2024/08/Right-to-Vote-Decision.pdf.

35 IACmHR, Report No. 67/06, Case 12.476, 21 Oct. 2006, https://cidh.oas.org/annualrep/2006eng/CUBA.12476eng.htm.

36 IACtHR, Ser. C No. 184, 6 Aug. 2008, https://www.corteidh.or.cr/docs/casos/articulos/seriec_184_ing.pdf.

37 IACtHR, Ser. C. No. 371, 28 Nov. 2018, para. 240, https://www.corteidh.or.cr/docs/casos/articulos/seriec_371_ing.pdf.

38 ACmHPR, 279/03-296/05, 1 May 2009, para. 171, https://www.refworld.org/cases,ACHPR,51b890c24.html.

Key gap-filling needs:

- Limits on the right of officials to participate in assemblies
- Whether there are circumstances when someone acting alone benefits from protection from freedom of assembly
- Whether legal entities benefit from freedom of assembly
- The right not to participate in an assembly and whether organizers have a right to exclude individuals from an assembly (for example on the basis that they are projecting a message which runs counter to that of the assembly)
- Whether assemblies which promote banned forms of expression, such as hate speech, or which have as their aim to prevent others from exercising their freedom of assembly (normally counter-demonstrations) are protected
- Further clarity on the conditions under which an assembly, as such, can be deemed to have lost its peaceful character and is therefore no longer protected
- Further clarity on what would constitute a "reprehensible act" (short of violence or destruction of property) such that those engaging in it may be ordered to stop

1.2. POSITIVE STATE OBLIGATIONS

The main issues relating to this topic in the Classification Guide are:

1. **Enabling legal framework**
2. **Security, facilitation and preventing obstruction** (e.g., extent of positive obligation, requirements before assembly, levels of government covered)
3. **Accommodation** (standards on requirement to put up with disruption, but limits to this should be addressed under restrictions)
4. **Raising awareness**

Positive State obligations are an important area for standards relating to freedom of assembly but, overall, the standards in the target jurisdictions are far less developed (with the exception of some IACtHR cases).

A first issue here is the positive obligation of the State to put in place a clear and enabling legal framework for assemblies. This may include regulations, policies and codes of conduct. Moreover, it should, among other things, cover such issues as the behavior expected of law enforcement authorities, including as to the resort to the use of force and the responsibilities of different levels of officials, and accountability for any failures to respect the rules.

In *Women Victims of Sexual Torture in Atenco v. Mexico*, the IACtHR, in a section under the overall heading of "Use of force and right of assembly", and the sub-heading "Use of force", referred to the need for a "clear and effective legal framework" and for "adequate mechanisms to control and verify the legitimacy of the use of force" , and then held Mexico responsible for failing to meet these standards.[39] In *Tavares Pereira and Others v. Brazil*, the IACtHR also referred generally to the need to train officials so that they were aware of the legal rules (but not directly to the nature of the legal rules which were required) and also to the need for clear protocols for recording and documenting events, identifying agents and issuing notifications regarding the use of force.[40] In *Ethiopian Electorate v. Ethiopia*, the ACmHPR set out the responsibility of States to create "an environment conducive to peaceful assembly, wherein individuals can gather without fear of retaliation or harassment" and later specified that where States enact laws on freedom of assembly "those laws shall aim primarily at facilitating the enjoyment of the right."[41] In *Kurtinbaeva v. Kazakhstan*, the HRC also referred to States' obligation to "put in place a legal and institutional framework within which the right [to freedom of assembly] can be exercised effectively".[42] There is little else which is more specific on this issue in the jurisprudence. These are helpful general statements but it would be useful to develop further detail as to the specific nature of State obligations in this area.

A number of the cases recognize that States have a positive obligation to provide facilitation and even protection, as required, to enable the exercise of freedom of assembly. In a number of cases before the HRC, Russia had refused to authorize assemblies in support of LGBTQ+ rights, among other reasons because they claimed that there would be a negative, potentially violent, reaction from the general population and that they could not ensure the security of those participating in the assembly. In rejecting these claims in *Alekseev v. Russian Federation*, the HRC stated:

> States parties have a duty to protect the participants in such a demonstration in the exercise of their rights against violence by others. It also notes that an un-

39 Ser. C. No. 371, 28 Nov. 2018, paras. 161 and 166, https://www.corteidh.or.cr/docs/casos/articulos/seriec_371_ing.pdf.

40 16 Nov. 2023. Ser. C No. 507, para. 103, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf.

41 Communication No. 599/16, 1 Nov. 2023, paras. 209 and 212, https://rfkhumanrights.org/wp-content/uploads/2024/08/Right-to-Vote-Decision.pdf.

42 Communication No. 2540/2015, 5 Nov. 2020, para. 9.4, https://juris.ohchr.org/casedetails/3490/en-US.

> specified and general risk of a violent counterdemonstration or the mere possibility that the authorities would be unable to prevent or neutralize such violence is not sufficient to ban a demonstration. The State party has not provided the Committee with any information in the present case to support the claim that a "negative reaction" to the author's proposed picket by members of the public would involve violence or that the police would be unable to prevent such violence if they properly performed their duty.[43]

Once again, the Inter-American standards are more detailed here. In *Women Victims of Sexual Torture in Atenco v. Mexico*, the IACtHR talked about the need to provide training to law enforcement personnel on human rights and limits to the use of force and then held Mexico responsible for failing to meet that need.[44] The Court made more significant and detailed references to this in *Tavares Pereira and Others v. Brazil*. It referred to States' obligations to facilitate peaceful protests, especially where these involve disadvantaged groups or children, to engage in dialogue with those planning the assembly so as to minimize traffic disruption and to provide security, to protect both participants and non-participants, to ensure that security operations are carefully planned and undertaken by officers who are both trained and experienced, to provide a range of types of weapons and protective equipment to officers so that they can respond proportionately and appropriately to events, and to establish clear command structures to the same end. [45]

These are all helpful references although they are, like the references to the legal framework, rather general, such that they would benefit from further elaboration, including in different fact settings. One area where standards either have not been established or require further elaboration concerns the sorts of considerations which are relevant to assessing whether or not providing protection would place a disproportionate burden on the authorities such that they would be justified in postponing, relocating or potentially even banning an assembly. Standards regarding what sorts of preventive measures might be appropriate – such as warning groups which might seek to disrupt an assembly that this would be illegal and that measures would be taken against them should they try that – could also be developed.[46]

An inherent aspect of many assemblies is that they cause disruption to the ordinary flow of life, for example by blocking traffic or other forms of movement or creating noise. It was noted above that even where such acts are formally illegal – as is nor-

---

43 Communication No. 1873/2009, 25 Oct. 2013, para. 9.6, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR%2FC%2F109%2FD%2F1873%2F2009&Lang=en.

44 Ser. C. No. 371, 28 Nov. 2018, paras. 161 and 166, https://www.corteidh.or.cr/docs/casos/articulos/seriec_371_ing.pdf.

45 16 Nov. 2023. Ser. C No. 507, respectively, paras. 91, 97, 98, 101 and 103, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf.

46 In the case of *Alekseyev v. Russia*, 21 Oct. 2010, Applications Nos. 4916/07, 25924/08 and 14599/09, paras. 73-76, the ECtHR assessed carefully claims that the City of Moscow could not provide adequate protection for a march "to draw public attention to discrimination against the gay and lesbian minority in Russia", noting that States must "take reasonable and appropriate measures" to protect those engaging in assemblies which might cause offence to others. While States have some margin of appreciation in such cases, they need to assess the situation carefully, give notice to counter-demonstrators about respecting the law and the right of others to demonstrate, and prosecute anyone who might have issued an illegal threat against the demonstrators. The Court also noted that the expected presence of only 100 counter-demonstrators could not be said to be overwhelming for a city such as Moscow. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-101257%22]}

mally the case for walking down the middle of a road designed for motor vehicles – they should be tolerated unless, to use the language of the ECtHR, they constitute "reprehensible" acts. This can be characterized as a positive obligation on the State to tolerate minor illegality and disruption (and, in practice, a similar responsibility for citizens).

At the same time, a discussion of this issue of balancing is almost entirely absent from the jurisprudence of the target jurisdictions. This is mainly because in most of the cases either freedom of assembly was either quite clearly and illegitimately restricted or, in a few cases, no breach of this right was properly established (although breaches of related rights normally were). As the cases which are being brought from the target jurisdictions transition from what we might term more obvious fact patterns to more subtle ones, this issue is likely to arise more frequently. As such, developing standards in this area could be quite an important direction to consider.

Finally, international standards suggest that States should raise awareness, in particular among organizers, about freedom of assembly, including remedies.[47] *Tavares Pereira and Others v. Brazil* does talk about communications prior to the event but does not specifically refer to awareness raising.

Key gap-filling needs:

- More clarity on States' obligations to put in place an enabling legal framework for freedom of assembly
- More clarity on States' obligations to facilitate and provide security for assemblies, including preventive measures
- More clarity on States' (and citizens') obligations to tolerate disruption
- More clarity on States' obligations to raise awareness about freedom of assembly

47 See, for example, General Comment No. 37 of the UN Human Rights Committee, footnote 7, para. 28

1.3. RESTRICTIONS

Freedom of assembly is not an absolute right under international law, like neighboring rights such as freedom of expression and association. This is a complicated part of the system of protection for freedom of assembly and this sub-section of the report is thus broken down into five further sub-sections dealing, respectively, with the General Test for Restrictions, Notice, Time, Manner, Place Restrictions, Use of Force and Other Issues.

The main issues relating to this topic in the Classification Guide are:

1. General test

a. "In conformity with the law"
b. Legitimate interest
c. Necessary in a democratic society
d. Other features (e.g., onus on State to prove these elements, prior restraints, blanket restrictions)

2. Notice

3. Time, manner, place restrictions

4. Use of force

a. General requirements (e.g., preconditions for use of force such as clear legal framework and exhaustion of non-violent measures, rules on extent of force used, use of military actors)
b. Specific requirements regarding weapons (e.g., when less-lethal or wide area weapons may be used)

5. Other Issues

a. Other systems of control (other than force) (e.g., preventive detention, mass arrest, stop and search, kettling, plain-clothes police)
b. Dispersals (e.g., requirement for a clear legal regime, when it is appropriate, conditions when engaging in dispersal)
c. Emergencies (when and how far derogations are permitted)

1.3.1. General Test for Restrictions

The test for restrictions on freedom of assembly under international law is very similar to the test for restrictions on freedom of expression and, in practice, courts have treated the test in a very similar manner. *The International Covenant on Civil and Political Rights* (ICCPR)[48] requires restrictions to be "in conformity with the law",[49] "necessary in a democratic society",[50] and in the interests of "national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others".[51]

There are numerous general statements affirming the broad three-part test for restrictions on freedom of assembly in the jurisprudence, with proportionality often being added to the requirement of necessity. These also often affirm that the onus lies on the State seeking to justify an interference with freedom of assembly to justify that interference as being legitimate (once the interference has been established, for which the onus lies on the complainant). A good example of this is the following statement by the HRC in *Pugach v. Belarus*:

> The Committee further notes that no restrictions may be placed on the right guaranteed under article 21, other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual's right to assembly and the aforementioned interests of general concern, it should be guided by the objective to facilitate the right, rather than seek to impose unnecessary or disproportionate restrictions on it. The State party is thus under the obligation to justify the restriction imposed on the right protected under article 21 of the Covenant.[52]

The cases also make it clear that the limits on restrictions apply to both direct and indirect restrictions (see, for example, *Registered Trustees of Faculty of Peace Organisation & 3 Ors v. Nigeria*),[53] that restrictions may not undermine the essence of the right (Sekerko v. Belarus)[54] or be discriminatory or aimed at discouraging participation in assemblies or creating a chilled effect to that end (*Ivanov v. Russia*),[55] and that

48 UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

49 On the legality prong, Article 19(3) of the ICCPR requires restrictions on freedom of expression to be "provided by law".

50 As compared to simply "necessary" for freedom of expression.

51 As compared to "respect of the rights or reputations of others" and "protection of national security or of public order (ordre public), or of public health or morals" for freedom of expression.

52 Communication No. 1984/2010, 15 Jul. 2015, para. 7.7, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F114%2FD%2F1984%2F2010&Lang=en.

53 ECOWAS Court, ECW/CCJ/JUD/06/22, 21 Mar. 2022, para. 60, https://africanlii.org/en/akn/aa-au/judgment/ecowascj/2022/4/eng@2022-03-21.

54 HRC, Communication No. 1851/2008, 28 Oct. 2013, para. 7.1, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR%2FC%2F109%2FD%2F1851%2F2008&Lang=es.

55 HRC, Communication No. 2635/2015, 18 Mar. 2021, para. 7.4, https://juris.ohchr.org/casedetails/3244/en-US.

restrictions should in general be content neutral (*Ivanov v. Russia*),[56] perhaps subject to limits on content which is legitimately banned, such as hate speech.

(a) "In Conformity With the Law"

There is not much in the caselaw as to the precise standards which are associated with being "in conformity with the law". In *Turdukulov v. Kyrgyzstan*, there was a discussion about whether the law relied upon by the authorities was actually in force at the relevant time. The HRC ultimately concluded that there was no timely requirement of notification, as the authorities had claimed, since the relevant legislation had been repealed,[57] but that does not probe into the specific conditions for this part of the test. In *Ethiopian Electorate v. Ethiopia*, the ACmHPR also does not elaborate further on what "provided by law" entails, although the Commission did indicate that where States enact laws on freedom of assembly "those laws shall aim primarily at facilitating the enjoyment of the right."[58] In *Mohamed Merza Ali Moosa v. Bahrain*, the Working Group on Arbitrary Detention (UN WGAD) reiterated many of the standard requirements for restrictions which have been developed in the context of freedom of expression, in a discussion which applied generally to "violations of the right to freedom of expression, association and assembly", such as that "laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly" and that the rules should not be "vague and overly broad."[59]

There is, however, very little further elaboration in the jurisprudence of the conditions governing this part of the test, including whether there is any difference between the concepts of "provided by law" (used for freedom of expression and, with the slight amendment to "prescribed by law", also for freedom of religion and association) and "in conformity with the law".

(b) Legitimate Interest

In terms of legitimate interests, the various cases refer to a number of different legitimate interests, including health (*Tavares Pereira and Others v. Brazil*)[60] and the administration of justice (*Youbko v. Belarus*),[61] without elaborating on the nature of these interests. In *Ivanov v. Russia*, which involved a refusal to authorize an LGBT rights assembly (in the context of a history of such refusals), the HRC did elaborate in some detail on the otherwise rather vague notion of public morals, which various mechanisms have sought to pare down steadily in modern times in the context of restrictions on freedom of expression, stating:

56 HRC, Communication No. 2635/2015, 18 Mar. 2021, para. 7.10, https://juris.ohchr.org/casedetails/3244/en-US.

57 Communication No. 2905/2016, 10 Mar. 2023, paras. 7.5-7.7, https://juris.ohchr.org/casedetails/3801/en-US.

58 Communication No. 599/16, 1 Nov. 2023, para. 212, https://rfkhumanrights.org/wp-content/uploads/2024/08/Right-to-Vote-Decision.pdf.

59 No. 59/2019, 43787, para. 60, https://undocs.org/A/HRC/WGAD/2019/59.

60 16 Nov. 2023. Ser. C No. 507, para. 98, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf.

61 HRC, Communication No. 1903/2009, 17 Mar 2014, para. 9.6, https://juris.ohchr.org/casedetails/1808/en-US.

> The Committee notes that restrictions on peaceful assemblies should only exceptionally be imposed for the protection of "morals". If used at all, this ground should not be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination. The Committee recalls that restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity.[62]

It may be noted that the reference to understandings of morality not coming from a single tradition and being understood in light of the universality of human rights and the principle of non-discrimination was taken essentially verbatim from the HRC's General Comment No. 34: Article 19: Freedoms of opinion and expression.[63] It would be useful to export this notion to regional jurisdictions if possible.

In *Tavares Pereira and Others v. Brazil*, the IACtHR referred to relatively narrow notion of national security as a ground for restricting assemblies, namely to protect the existence of the nation, its territorial integrity or its political independence against force or the threat of force.[64] However, the facts of the case did not reflect any credible claim of a threat to national security and it is unclear whether the same conclusion would be drawn if that had been the case. It does not seem unreasonable to characterize external threats of force which fall short of this very high standard, such as the attacks of 11 September 2001 in the United States, as falling within the scope of national security. In any case, further elaboration of this complicated notion would certainly be useful.

In relation to public order, often coupled with the rights of others, the issue of legitimate interests has particularly interesting implications in relation to freedom of assembly. This is because, as the HRC stated compendiously in *Georgiy Arkhangelskiy et al. v. Kazakhstan*: "Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration."[65] As noted above, non-reprehensible but illegal behavior during assemblies should be tolerated, even if it undermines the rights of others. At the same time, it is clear that there are limits to this and that some sort of balance needs to be struck between allowing assemblies to communicate their intended messages, to their intended audiences, and not letting them cause too much inconvenience. How to strike this balance is key to understanding the nature and scope of freedom of assembly and this issue arises in a number of the ECtHR cases on the issue.

In *Tavares Pereira and Others v. Brazil,* the IACtHR sought to impose limits on the

62 Communication No. 2635/2015, 18 Mar 2021, para. 7.8, https://juris.ohchr.org/casedetails/3244/en-US.

63 HRC, General Comment No. 34: Article 19: Freedoms of opinion and expression, 12 Sept 2011, para. 32, https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and.

64 16 Nov. 2023. Ser. C No. 507, para. 98, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf ("limitaciones necesarias para proteger la existencia de la nación, su integridad territorial o su independencia política contra la fuerza o la amenaza de la fuerza").

65 Communication Nos. 2539/2015, 2544/2015, 2549/2015, 2550/2015, 2538/2015, 10 Mar. 2023, para. 8.5, https://juris.ohchr.org/casedetails/3805/en-US.

notion of "public safety" as a grounds for restricting freedom of assembly, which is notably not found in the list of grounds for restricting freedom of expression. The Court noted that this should be limited to cases of a significant and immediate danger to life or physical integrity, or a risk of serious damage to property.[66] This is helpful but again needs further elaboration, likely in the context of facts which help give concreteness to the commentary. It was also highlighted by the Court that minor intrusions into physical integrity, such as pushing and shoving, are often inevitable in assemblies and should not be grounds for restricting an assembly.

Courts have, in other contexts, recognized that public order, which in the ICCPR is followed in brackets by the French term "ordre public", is a wider concept than simply avoiding material disorder and that it extends to the ability to run societies in an orderly manner, including by having an effective bureaucracy. The HRC, again in *Georgiy Arkhangelskiy et al. v. Kazakhstan*, recognized this albeit perhaps in a somewhat broad guise, as follows:

> The Committee also observes that "public order" refers to the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entail respect for human rights, including the right of peaceful assembly. States parties should not rely on a vague definition of "public order" to justify overbroad restrictions on the right of peaceful assembly.[67]

Courts have often recognized that respect for human rights is a precondition for both public order and national security, but it is another matter to incorporate the notion of respecting human rights directly into these concepts. It is also somewhat difficult to reconcile the ideas that public order covers "the sum of the rules that ensure the proper functioning of society" and yet that it should not be defined vaguely.

There is a clear need for further articulation of what public order and the rights of others comprises in the context of an assembly. At the same time, some part of this may need to be addressed under the necessity, rather than the legitimate interests part of the test for restrictions.

(c) Necessary in a Democratic Society

In terms of necessity, courts have often articulated the idea in a general way, such as when the HRC, in *Korol v. Belarus*, stated: "When a State party imposes restrictions with the aim of reconciling an individual's right to assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it."[68] Other features of necessity which have been referred to, often in a general way, include the ideas that restrictions should be the least intrusive option available and proportion-

66 16 Nov. 2023. Ser. C No. 507, para. 98, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf ("un peligro significativo e inmediato para la vida o la integridad física de las personas o un riesgo de daños graves a sus bienes").

67 Communication Nos. 2539/2015, 2544/2015, 2549/2015, 2550/2015, 2538/2015, 10 Mar. 2023, para. 8.5, https://juris.ohchr.org/casedetails/3805/en-US.

68 Communication No. 2089/2011, 14 Jul. 2016, para. 7.5, https://juris.ohchr.org/casedetails/2148/en-US.

ate (see, for example, *Toregozhina v. Kazakhstan*)[69] and serve a pressing social need (see, for example, *Georgiy Arkhangelskiy et al. v. Kazakhstan*).[70]

In *Kulumbetov v. Kazakhstan*, among others, the HRC clarified that proportionality "requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering" and that "[i]f the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible".[71] In *Ethiopian Electorate v. Ethiopia*, the ACmHPR stated that where "laws are violated when exercising their right to freedom of assembly, the Respondent State's action must be proportional to the violation. Where the Respondent State's action is to disperse the crowd of protesters, such dispersal must be done with reasonable force. Where the Respondent State's action is to apply sanctions, such sanctions must be applied proportionally to the harm caused."[72] In *Tavares Pereira and Others v. Brazil*, the IACtHR made it clear that any absolute or prior ban on an assembly taking place was presumptively invalid as being disproportionate.[73] The HRC has also made it clear that limiting assemblies to one location in a city is not legitimate (see, for example, *Vasilevich and Ors v. Belarus*).[74]

These are all useful statements which help to elaborate on the notion of necessity. But far more elaboration of the details of this, for example as to when an assembly has had a sufficient opportunity to convey its message and the (ongoing) disruption to ordinary life is no longer justified, is needed. The relatively extreme nature of the facts of most of the cases from the target jurisdictions, which often involved either complete bans on or the prevention of assemblies or the sanctioning of individuals for participating in brief and peaceful (if unauthorized) assemblies, has to some extent precluded courts from elaborating in a more subtle manner on these issues.

1.3.2. Notice

Many of the cases decided by the HRC on freedom of assembly involve invalid notice or authorization regimes. There is a somewhat complicated balance to be struck here as courts have often recognized that prior notification regimes can support freedom of assembly by enabling the authorities to plan properly in advance for facilitation and support measures, such as routing traffic away from the assembly,

69 HRC, Communication No. 2137/2012, 21 Oct. 2014, para. 7.5, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F112%2FD%2F2137%2F2012&Lang=en.

70 HRC, Communication Nos. 2539/2015, 2544/2015, 2549/2015, 2550/2015, 2538/2015, 10 Mar. 2023, para. 8.6, https://juris.ohchr.org/casedetails/3805/en-US.

71 Communication No. 2547/2015, 6 Nov. 2020, para. 8.7, https://juris.ohchr.org/casedetails/3260/en-US.

72 Communication No. 599/16, 1 Nov. 2023, para. 216, https://rfkhumanrights.org/wp-content/uploads/2024/08/Right-to-Vote-Decision.pdf.

73 16 Nov. 2023. Ser. C No. 507, para. 98, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf.

74 Communication Nos. 3002/2017, 3084/2017, 2693/2015, 2898/2016, 14 Mar. 2023, para. 7.4, https://juris.ohchr.org/casedetails/3841/en-US.

providing security and medical support as needed, and potentially engaging in negotiations with organizers so as to minimize disruption while also allowing for robust communication of the message sought to be conveyed. On the other hand, notification regimes can be abused, for example by becoming systems of authorization or tools for imposing overly bureaucratic restrictions on organizers, or a means of imposing subsequent liability on organizers (for failing to comply with the regime).

An extreme example of this is Belarus, where many of the cases involved requirements on organizers not only to notify the authorities about assemblies but also to conclude contracts with the authorities to provide security, medical care and other forms of facilitation, which appeared to be impossible to do in practice, even where organizers were willing to do this (and pay for it), unless perhaps the authorities supported the assembly in question. Most of the HRC decisions from Belarus revolved around this idea and we assume that this also applies to many of the very numerous pending cases from that country. This issue comes up far less often in the Inter-American cases, but that may reflect a lower prevalence of notification regimes in that region.

A few standards relating to notification regimes are clear. First, even where such a regime is in place, an assembly which proceeds without having complied with the regime is not, per se, illegal, even if some sort of limited administrative sanction may be imposed on the organizers (see, for example, *Registered Trustees of Faculty of Peace Organisation & 3 Ors v. Nigeria*).[75] While notification regimes can facilitate assemblies, and as such are not implicitly a breach of freedom of assembly, their enforcement should not become an end in itself and these regimes, as restrictions, still have to be justified according to the three-part test. This is particularly true for spontaneous assemblies for which, by their very nature, notification cannot be provided (*Popova v. Russia*).[76] Notification regimes which are unduly bureaucratic or which function either formally or in practice as authorization regimes are not legitimate (see *Kulumbetov v. Kazakhstan*[77] and *Edmundo Alex Lemun Saavedra and others v. Chile*).[78]

Some issues relating to notification regimes which remain to be clarified through the jurisprudence include whether and if so what sort of sanctions may legitimately be imposed on organizers who do not comply with such a regime, and what specific features of such a regime would render it unduly bureaucratic or transform it into an authorization regime, thereby rendering it illegitimate. In addition, it could be clarified that notification regimes need to meet certain standards of transparency and clarity, and that a failure of the authorities to respond to a notification should not be treated as a failure to comply with the regime (as this would turn it into an authorization

75 ECOWAS Court, ECW/CCJ/JUD/06/22, 21 Mar. 2022, para. 63, https://africanlii.org/en/akn/aa-au/judgment/ecowascj/2022/4/eng@2022-03-21.

76 HRC, Communication No. 2217/2012, 6 Apr. 2018, para. 7.5, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F122%2FD%2F2217%2F2012&Lang=en.

77 HRC, Communication No. 2547/2015., 6 Nov. 2020, para. 8.4, https://juris.ohchr.org/casedetails/3260/en-US.

78 IACmHR, Report No. 458/21, Case 12.880, 31 Dec. 2021, para. 155, https://www.oas.org/en/iachr/decisions/2021/CHPU12.880EN.pdf.

regime). Also, a failure to notify does not relieve authorities of their responsibility to facilitate an assembly.

1.3.3. Time, Manner, Place Restrictions

On the positive side, in terms of protection, and as set out under Scope of the Right, freedom of assembly protects the right to assemble in any public place, within sight and sound of the target audience, and to use any means to express oneself. This is, however, subject to restrictions which can be justified in accordance with the three-part test, which is the subject of this sub-section. As indicated by the HRC in *Turchenyak et al. v. Belarus*: "The Committee notes that the thus de facto prohibition of an assembly in any public location in the entire city of Brest, with the exception of the Lokomotiv stadium, unduly limits the right to freedom of assembly."[79]

In *Chebotareva v. Russia*, the HRC rejected the State's claim that it could not allow an assembly because another assembly was planned for the same day and location. In that case, the other assembly never in fact took place and the HRC deemed the State's claim regarding it to be a "mere pretext given in order to reject the author's request".[80] What the case did not go on to say, given its finding on the facts, was that even if another assembly, or even a counter-assembly, had been planned for the same time and location, the State should normally put in place facilitation measures so that both assemblies could take place as planned, perhaps with minor adjustments as to location (for example with one taking place on one half of a square and the other on the other half).

A number of other issues relating to time, manner, place issues have not yet been addressed in the jurisprudence. A key one is the circumstances under which a location or potentially also time requested by the organizers may be refused and the corresponding obligations which flow from that. Better practice standards in this area suggest that a location should be refused or a previously agreed location changed only where the authorities have done a concrete risk assessment and have concluded that they are clearly or manifestly unable, despite making a significant effort, to ensure security without the changes.[81] Where changes are required, suitable alternatives should be offered, if at all possible within sight and sound of the target audience.

79 Communication No. 1948/2010, 24 Jul. 2013, para. 7.5, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR%2FC%2F108%2FD%2F1948%2F2010&Lang=es.

80 Communication No. 1866/2009, 26 Mar. 2012, para. 9.3, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F104%2FD%2F1866%2F2009&Lang=en.

81 See, for example, the reference to this in footnote 55 and the ECtHR case of *Alekseyev v. Russia*.

Some other issues which have not yet been addressed in the caselaw include:

- The fact that repeated and longer-term assemblies are protected but may be limited as justified to protect the rights of others.
- Perimeters around public buildings, including courtrooms, need to be justified just like any other restriction.
- Those participating in an assembly have a right to wear masks and other face coverings, although these may be required to be removed as needed and justified for purposes of arrest.
- Any limits on the nature of an assembly, including as to the number of participants involved, need to be justified in accordance with the three-part test, for example on health or safety grounds, or potentially due to a disproportionate impact on the rights of others.

1.3.4. Use of Force

None of the HRC cases which directly address freedom of assembly address the use of force since all related to assemblies which were either prohibited or were peaceful. The IACtHR cases of *Women Victims of Sexual Torture in Atenco v. Mexico* and *Tavares Pereira and Others v. Brazil* included some important statements about the use of force, some of which are addressed above under Positive State Obligations, given that they involved measures which States should put in place proactively in advance, in case any assembly does require the use of force. Thus, in *Women Victims of Sexual Torture in Atenco v. Mexico*, the IACtHR indicated generally that the use of force should be adequately regulated, that law enforcement personnel should receive appropriate training on the limits and conditions governing the use of force, and that force should only be used against individuals who present an "imminent threat of death or serious injury" and not against "those persons who do not present this threat".[82]

Many of these ideas were repeated in *Tavares Pereira and Others v. Brazil*, which also added that different types of weapons and protective equipment should be available to law enforcement authorities so that they can respond proportionately when the use of force is required, that clear command structures should be in place, and that

82 Ser. C. No. 371, 28 Nov. 2018, para. 160 and 161, https://www.corteidh.or.cr/docs/casos/articulos/seriec_371_ing.pdf.

protocols should exist governing the recording of the use of force for purposes of accountability. That case also established the principle that in no case should the approach to the use of force treat demonstrators or the population as the enemy.[83]

In *Ethiopian Electorate v. Ethiopia*, the ACmHPR stated that the use of force against protesters which resulted in injuries to many and even fatalities could not be considered proportionate.[84] In *Jennifer Williams and Others (represented by Zimbabwe Lawyers for Human Rights) v. Zimbabwe*. In this case, the ACmHPR stated that "it is the responsibility of states to ensure that security forces do not use excessive force against protesters. It is also tasked with creating an environment conducive to peaceful assembly, wherein individuals can gather without fear of retaliation or harassment."[85]

Several cases talked about the inappropriateness of the use of firearms in the context of assemblies. In *Tavares Pereira and Others v. Brazil*, for example, the IACtHR stated clearly that firearms are not an appropriate tool for policing assemblies and that they should never be used to disperse assemblies .[86] In *Mohamed Morlu v. Sierra Leone*, the ECOWAS Court did not rule out firearms entirely in the context of an assembly where violence was escalating, but held that firing "live ammunition into the crowd without any prior warning" to the participants to disperse was unjustified.[87] In *Ethiopian Electorate v. Ethiopia*, the ACmHPR stated that "shooting at protesters to disperse them crosses the threshold of proportionality."[88]

These are all useful statements but the idea of States having in place varied options to respond to assemblies which have turned or are turning violent could be elaborated upon in significantly greater detail. For example, the first response to violence should be to deescalate rather than to respond with force. And non-violent but coercive responses should normally be tried before force is used. Plans should be put in place for assemblies which pose a risk of violence and generic plans should be in place in case spontaneous assemblies become violent. As was noted in *Mohamed Morlu v. Sierra Leone*, warnings should be issued not only before live ammunition is used but normally before force of any sort is used. Wide-area weapons such as tear gas and water cannons are by definition indiscriminate and should be used only where more targeted measures are unable to contain the violence and on the order of a very senior official. While it is probably not realistic to rule out the use of firearms entirely, they should, as stated in *Tavares Pereira and Others v. Brazil*, never be

83 Ser. C No. 507, 16 Nov. 2023, para. 98, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf.

84 Communication No. 599/16, 1 Nov. 2023, para. 212, https://rfkhumanrights.org/wp-content/uploads/2024/08/Right-to-Vote-Decision.pdf.

85 Communication No. 599/16, 1 Nov. 2023, para. 209, https://rfkhumanrights.org/wp-content/uploads/2024/08/Right-to-Vote-Decision.pdf.

86 Ser. C No. 507, 16 Nov. 2023, para. 98, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf ("Las armas de fuego no son un instrumento adecuado para vigilar las reuniones. Nunca se deben utilizar simplemente para dispersar una reunión").

87 ECW/CCJ/JUD/04/24, 28 Feb. 2024, para. 44.

88 Communication No. 599/16, 1 Nov. 2023, para. 218 https://rfkhumanrights.org/wp-content/uploads/2024/08/Right-to-Vote-Decision.pdf.

used for dispersal purposes and only ever be used as a last resort (and after giving a warning). Military actors should not normally be used to police assemblies and this should only even be contemplated, as a last resort, if the soldiers in question have received adequate training (as was emphasized for law enforcement personnel). Having a mechanism decide a number of cases where law enforcement personnel used different approaches could help develop the standards in this area.

1.3.5. Other Issues

One important other issue, albeit one which has received little attention in the case-law, is when it is appropriate to disperse an assembly and what standards apply in that case.

The only mention of dispersal in the caselaw so far is in in *Tavares Pereira and Others v. Brazil*, where the IACtHR indicated that any order to disperse should be communicated clearly, such that participants understand it, and that participants should then be given an opportunity (time and geographic wherewithal) to disperse before force is used to enforce the dispersal order.[89]

This is useful but a number of other standards relating to dispersals are absent from the caselaw. One initial issue is when it is appropriate to disperse an assembly in the first case. There are, generally, three circumstances in which this is justified, namely where violence has escalated out of control and cannot be contained other than through a dispersal, where violence is so widespread or other characteristics apply such that the assembly as such can no longer be considered to be peaceful or legal, such that it is no longer a protected event, and where, normally due to the length of an assembly, dispersal is justified as a proportionate measure to protect the rights of others. Just as for the use of force and any other restrictions on assemblies, a clear legal regime should exist for this, setting out not only the conditions for dispersal but who can order it (normally only a very senior official).

Where possible, as always, force should be avoided or used only as strictly required during dispersals. Even where an assembly is no longer protected, other human rights rules continue to apply during a dispersal. Non-participants in the assembly, and especially monitors such as journalists and civil society observers, as well as external support actors such as medical staff, should not normally be captured by a dispersal operation. Where a separate justification for their dispersal exists, normally because they would otherwise significantly disrupt law enforcement operations, this should normally take the form of having them move to another location from where they can continue to pursue their activities.

While non-forceful actions by law enforcement personnel are preferable to the use

89 Ser. C No. 507, 16 Nov. 2023, para. 98, Available only in Spanish: https://www.corteidh.or.cr/docs/casos/articulos/seriec_507_esp.pdf.

of force, they are also subject to conditions. Preventing would-be participants in an assembly from reaching the assembly is tantamount to a prior restraint on freedom of assembly and, as the IACtHR indicated in *Tavares Pereira and Others v. Brazil*, this is presumptively illegitimate. Exceptions would be where either the assembly as a whole was not protected due to its explicitly violent or otherwise illegal objectives or where it was very likely that the individuals in question, as determined on an individual basis, were going to engage in violence at the assembly. Similarly, searching would-be participants on their way to an assembly is only legitimate where necessary to prevent violence and items should be seized only where they are weapons or they are clearly intended to be used as weapons. Kettling, or the forcible containing of people in a confined location, should be used to respond to violence only where less intrusive, normally individualized measures are not effective. Similarly, mass arrests are indiscriminate and are not legitimate. In *Ethiopian Electorate v. Ethiopia*, the ACmHPR highlighted that "arresting and detaining opposition leaders without any lawful cause does not satisfy any legitimate aim and is not in line with practices necessary in a democratic society."[90]

The jurisprudence establishes a number of standards relating to sanctions against participants in assemblies. First, it is clear that sanctions relating to an assembly which was restricted illegitimately are presumptively invalid (see, for example, *Zhagiparov v. Kazakhstan*).[91] Second, organizers of an assembly (and anyone else) are not responsible for the unlawful conduct of others (unless they incited or otherwise supported it) (see *Ferney Salcedo Gutiérrez and others v. Colombia*[92] and *Women Victims of Sexual Torture in Atenco v. Mexico*).[93] Instead, liability needs to be assessed on an individualized basis (*Kurtinbaeva v. Kazakhstan*).[94] Third, even where some sort of sanction is justified, it must be proportionate. In the case of *Giménez v. Paraguay*, the HRC held that the imposition of a ban on an individual from participating in any assembly of more than three people for a period of two years was not necessary to protect any legitimate interest.[95] A related idea is that reprisals for assembly-related actions which take place outside of the framework of rules relating to assemblies are not legitimate. Thus, in *Gryb v. Belarus*, the HRC held that a refusal to issue the complainant with a license to practice law in retaliation for participating in an assembly amounted to a form of restriction on freedom of assembly and was, as such, not necessary.[96]

90 Communication No. 599/16, 1 Nov. 2023, para. 218 https://rfkhumanrights.org/wp-content/uploads/2024/08/Right-to-Vote-Decision.pdf.

91 HRC, Communication No. 2441/2014, 25 Oct. 2018, para. 13.6, https://undocs.org/CCPR/C/124/D/2441/2014.

92 WGAD, No. 3/2020, 43950, para. 68, https://undocs.org/A/HRC/WGAD/2020/3.

93 IACtHR, Ser. C. No. 371, 28 Nov. 2018, para. 175, https://www.corteidh.or.cr/docs/casos/articulos/seriec_371_ing.pdf.

94 HRC, Communication No. 2540/2015, 5 Nov. 2020, para. 9.7, https://juris.ohchr.org/casedetails/3490/en-US.

95 Communication No. 2372/2014, 25 Jul. 2018, para. 8.5, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F123%2FD%2F2372%2F2014&Lang=en.

96 Communication No. 1316/2004, 26 Oct. 2011, para. 13.4, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR%2FC%2F103%2FD%2F1316%2F2004&Lang=en.

Key gap-filling needs:

- Further elaboration of the standards relating to “in conformity with the law”
- Exportation to Africa and the Americas of the idea of morality being understood in light of the universality of human rights and not coming from a single tradition
- Further clarity on other legitimate interests in the context of assemblies including public order, public safety and national security
- Further elaboration on how to balance public order and the rights of others with the rights of participants in assemblies, including for longer duration and repeated assemblies
- Clarity on when notification regimes become unduly onerous or are effectively authorization regimes, as well as standards for such regimes such as transparency, clarity and timely responses by State authorities, and the implications of a failure of State authorities to respond
- What sorts of sanctions, if any, may legitimately be imposed on organizers for failing to comply with notification regimes and when (for example, not for spontaneous assemblies)
- The circumstances in which States may require adjustments to or potentially even ban assemblies, including as to number of participants, including on the basis that they cannot ensure security
- Further elaboration of the obligations on States when force is used, beyond the preparatory measures identified in the previous section, such as exhaustion of non-violent measures before force is used, prior warnings, avoiding wide-area weapons and firearms (and what conditions apply to their use), and the conditions under which military actors may legitimately be employed to control violent assemblies
- Further clarity on the standards relating to the use of non-forcible measures such as preventing individuals from arriving at assemblies, searching individuals and confiscating “weapons”, kettling and mass arrests
- Further elaboration of the standards relating to the dispersal of assemblies such as when this might be legitimate, conditions on how it may be done (in part as a specific elaboration of rules on the use of force) and standards relating to different types of actors (such as monitors and medical staff)

1.4. ACCOUNTABILITY AND REDRESS

The main issues relating to this topic in the Classification Guide are:

- Responsibility (e.g., scope for different actors, limits on sanctions)
- Effective right to appeal (availability and conditions)
- Investigations of serious allegations (scope and nature of requirement to investigate)

The IACtHR cases of *Women Victims of Sexual Torture in Atenco v. Mexico* and *Tavares Pereira and Others v. Brazil* both refer to the idea of accountability for unwarranted use of force against participants in an assembly, as indicated above. Beyond that, there should be a clear and effective framework of accountability for all willful official behavior which breaches the rules relating to freedom of assembly.

As part of the system of accountability, individuals should have access to an effective right to appeal against restrictions on freedom of assembly. For restrictions which take place before a planned assembly, appeal options should be sufficiently timely to allow for removal of the measures so as allow the assembly to proceed as planned. Courts should be the final arbiters of such appeals, but this does not preclude the idea of appeals going first to administrative oversight bodies, such as national human rights institutions. None of the caselaw addresses these issues.

Beyond individual responsibility and the right of individuals to lodge appeals, States should investigate allegations of serious breaches of freedom of assembly, as well as all cases where force is used on a widespread basis during an assembly. To facilitate this, as was pointed out by the IACtHR in the cases of *Women Victims of Sexual Torture in Atenco v. Mexico* and *Tavares Pereira and Others v. Brazil*, uses of force during assemblies should be recorded and reported on publicly. For more serious cases, an independent, in-depth inquiry should be held and victims should have access to redress. Beyond the limited references in *Women Victims of Sexual Torture in Atenco v. Mexico* and *Tavares Pereira and Others v. Brazil*, the caselaw does not address these issues.

Key gap-filling needs:

- Clarifying the need for a clear framework of accountability for all official actors who willfully obstruct freedom of assembly
- Clarifying the appeal rights of those claiming to be victims, including timely oversight of measures before planned assemblies and appeals to independent administrative oversight bodies, with the option to appeal to courts
- Clarifying the obligation on States to investigate allegations of serious breaches of freedom of assembly, including all cases where the use of force by the authorities is widespread, and when in-depth, independent inquiries are needed, along with the provision of redress to victims

1.5. PRIVATE SECTOR RESPONSIBILITIES

In this area, the Classification Guide refers to the scope of businesses' responsibilities to respect and facilitate the right to assembly including assemblies on private property and responsibilities of businesses which facilitate communications.

A few cases from the target jurisdictions refer to the right to assemble in both public and private spaces (see, for example, *Vasilevich and Ors v. Belarus*).[97] However, these references mostly appear to be to the right to assemble in private spaces owned by those assembling and not third-party private spaces. One HRC case, namely *Giménez v. Paraguay*, involved a series of assemblies on third-party private property which were aimed at securing the reopening of a hospital which had been closed and sold to a private party. However, the decision of the HRC on freedom of assembly appeared to relate to a condition imposed on the complainant for suspending a two-year sentence of imprisonment, namely a ban on participating in assemblies of more than three people, rather than the nature of the assembly which gave rise to the sentence, although the decision is not as clear on this point as it could be.

It is clear that private parties have human rights responsibilities and that this extends to freedom of assembly. Standards from outside of the target jurisdictions suggest that this at least includes allowing staff to participate in assemblies (or not sanctioning them for doing so), tolerating the disruption caused by assemblies

97 HRC, Communication Nos. 3002/2017, 3084/2017, 2693/2015, 2898/2016, 14 Mar. 2023, para. 7.5, https://juris.ohchr.org/casedetails/3841/en-US.

(along with everyone else), and not taking specific action to undermine freedom of assembly (such as where communications providers selectively block communications aimed at organizing an assembly). There is also some suggestion that private actors should accommodate assemblies on private property which is either always publicly accessible (such as private roads) or normally publicly accessible (such as shopping malls), subject to this not being unduly disruptive to the regular use of that private property, although the nature and extent of this is unclear. Further elaboration of these standards via jurisprudence in the target jurisdictions would be useful.

Key gap-filling needs:

- The full gamut of responsibilities of private parties in relation to freedom of assembly, including allowing staff to participate and not undermining the right, as well as the extent to which private parties should allow assemblies on private property

2. STRATEGIC CONSIDERATIONS

A number of strategic considerations need to be taken into account when developing a litigation strategy on freedom of assembly. One is whether the main aim is to develop standards on this right generally or to develop them in a particular jurisdiction. As has been noted, the ECtHR has a far more developed body of jurisprudence on this issue than other jurisdictions, although this remains incomplete.[98] Despite its relatively larger number of cases, the jurisprudence of the HRC, which of course formally covers a much larger number of countries,[99] in this area remains quite narrow, as noted above, because the cases all tend to revolve around notification regimes and are often decided relatively narrowly on that basis, although the HRC has also made some more general statements about freedom of assembly standards in these cases.

There are some areas where decisions of the ECtHR are relatively easy to "export" to other jurisdictions, including at the national level, because they are reasonably obvious, such as the prohibition on using firearms to disperse assemblies or the general obligation on States to facilitate assemblies. There are also other areas where standards may be harder to "export", such as the precise balance between accommodating disruption from assemblies and bringing an ongoing and disruptive assembly to an end, which may be deemed to be more culturally rooted. In addition to drawing on the ECtHR, the detailed benchmarks set out in other standard-setting documents – such as the Venice Commission/OSCE guidelines, General Comment No. 37, the report by the OAS Special Rapporteur for freedom of expression on *Protest and Human Rights,* and the *Guidelines on Freedom of Association and Assembly in Africa*[100] – are very useful as sources of standards.

A second consideration is that many of the areas where standards still need to be developed further are by their nature very fact based. The issue mentioned above, about how far States should accommodate disruptive assemblies, for example, depends heavily on the facts, both as to the level of disruption caused and as to the importance of tolerating disruption in the context of a particular assembly. There are numerous other very fact-based issues, with a few examples being how much violence is needed for an assembly to have lost its peaceful character, when the burden on States to provide security would be too great, what is an appropriate balance between allowing those participating in an assembly to get their message across and not disrupting the rights of others too much, and perhaps even whether and when private parties should allow assemblies on their private property. From a litigation

98 We did not do a detailed assessment of gaps and standard-setting needs at the ECtHR as that is beyond the scope of this report.

99 Whether you take this as the 116 State Parties to the (first) Optional Protocol to the ICCPR, which enables individual communications alleging breach of rights, or the 174 States Parties to the ICCPR itself (both as of end February 2025).

100 All of these are referenced in the methodology, outlined in the Annex to this report.

perspective, this means that it will not likely be easy to establish clear standards in these areas from just one case, unlike in some other areas, such as whether legal entities are protected by freedom of assembly. This does not mean that it is not important to try to establish key standards in those areas. Indeed, those are some of the most important questions relating to freedom of assembly. But developing standards in those areas will not be something which is easy to do.

A closely related consideration is that some mechanisms are more likely to be expansive in their reasoning in these and potentially other situations, so that they may provide more standard setting in a case, such as a list of factors to consider which would be useful beyond just the facts of one case. Overall, it would seem that the HRC is less likely to provide wider standard-setting decisions, while the Inter-American mechanisms are more likely to do that and the African mechanisms broadly fall somewhere in between the other two.

A sort of analogous point is that some issues are harder to get at through litigation, in the sense that more frequently occurring fact patterns are less likely to raise those issues. This is to some extent true in relation to the positive obligations on States, although the Inter-American mechanisms, and particularly the IACtHR, have been quite willing to extrapolate from the facts which did take place to set out the positive obligations on States which would prevent those fact patterns from occurring in the first place. It is not clear that the HRC would be as likely to do that.

It may also be difficult in some cases where the use of force has been excessive and individuals have been hurt to get mechanisms to focus on the freedom of assembly violation as compared to other violations – such as the right to life or security of the person – which come up in those cases. As noted at the outset, there were a few cases where different mechanisms did find a violation of freedom of assembly but only addressed it in a very superficial manner. And this may explain the relatively limited jurisprudence on the use of force across all of the mechanisms (along with the fact that in many cases the authorities relied on prior restraint to prevent assemblies happening at all, such as by refusing to authorize them or blocking the participants from arriving at them).

It may also be the case that the victims bringing some of these cases do not have full access to all relevant assembly-related information, for example if they were not involved in organizing the assembly or if they were not aware of the impacts of State actions on other assembly participants. This could be quite important given how fact dependent these cases often are. Or that litigants are more focused on the more blatant abuses occasioned by the use of force as compared to the more “subtle” freedom of assembly issues.

One potential way to avoid this is by only bringing a freedom of assembly claim – i.e. not making other human rights claims – but there are potential problems with this. First, this may be hard to justify vis-à-vis the victims who have suffered multiple human rights violations and wish to obtain as broad a remedy as possible. Second, this may backfire if the mechanism adds in other rights violations on its own, as happened in some of these cases. Alternately, it might be helpful to provide support

to the lawyers who are bringing these cases so that they are able to elaborate clearly both how the facts disclose evidence of an interference with freedom of assembly and how, legally, this represents an unjustifiable breach of that right.

Also relevant is the fact that breaches of freedom of assembly, due to the right's very nature, affect a very wide range of actors. While everyone, of course, exercises their freedom of expression, restrictions on this right tend to be skewed largely to more "powerful" speakers, such as journalists or politicians, although with social media this has changed somewhat. In contrast, even small assemblies organized by practically anyone might attract negative attention from the authorities. Fairly grassroots collaboration with local human rights groups, including to raise their awareness about the importance and nature of freedom of assembly, may be needed at the front end to promote greater grassroots activity on this right, eventually leading to more cases being elevated to international or regional mechanisms.

A final strategic consideration is that it is expensive and time consuming to exhaust domestic remedies and then bring cases to international or regional mechanisms. This may create skews in the jurisprudence where cases which move forward either have civil society support for them (which may be the case, for example, with some of the LGBTQ+ cases from Russia) or involve severe impacts (physical harm), such that the freedom of assembly element receives less attention. Some thought could be given to whether this is the case and, if so, how that might be addressed. Mobilizing funding to support freedom of assembly challenges at the domestic level, perhaps coupled with the collaboration mentioned in the previous paragraph, may be one way to do this.

3. ASSESSMENT BY JURISDICTION

3.1. Human Rights Committee

There are 116 States Parties to the (first) Optional Protocol to the ICCPR, which is what enables individual complaints. This includes many States for which this is the only supra-national individual decision-making jurisdiction, ranging from Australia and Canada, to all five central Asian States, to Mongolia, to Belarus, and now also to Russia since it has been excluded from the Council of Europe and thus the ECtHR.

Its decisions also arguably have relevance for the much larger number of States Parties to the ICCPR, namely 174, which covers much of South Asia, the Middle East and the Pacific. That makes it an important jurisdiction for these countries, which are not subject to any other supra-national human rights case mechanism.

The scope of the jurisprudence of the HRC is relatively limited, focusing largely on a package of issues relating to notification regimes (such as refusals to authorize an assembly and charges for failing to meet the notification requirements or holding an assembly without having notified the authorities).

As a result, there is extremely wide scope for additional standard-setting by this mechanism. Some key issues to consider here are positive State obligations to facilitate and support assemblies and tolerate disruption, issues relating to restrictions which are not based on notice, including the use of force and dispersals, and the need for proper systems of accountability and redress.

One of the downsides of this jurisdiction is that although there is a reasonably comprehensive list of pending cases, there is not enough information about them to make it realistic to plan to support any particular case with a view to achieving a specific litigation outcome. In addition, the HRC has only recently started to standardize its procedure for and be more welcoming of third-party interventions, although

it does now have Guidelines on this.[101] One way to get around the problem of not knowing which pending cases are relevant might be to build networks with groups which litigate frequently at the HRC, or in countries for which the HRC is the only supra-national mechanism, and exploring support options from there.[102] Given that the timeline for litigating before the HRC is considerable (as is the case with most of the mechanisms), the effort this would take might still be worthwhile.

Another issue to consider here is that although the caselaw of the HRC on freedom of assembly is rather limited, they have adopted General Comment No. 37, which goes into far more detail on freedom of assembly standards. While there is clearly a difference between an individual case and a statement of standards such as the General Comment, the gap may be a bit smaller before the HRC, given that it is not a court, as such, and its decisions are thus not formally legally binding. At the same time, there appears to be something of a trend whereby the HRC is citing more expansively to General Comment No. 37 in its caselaw, sometimes even beyond the issues which are strictly relevant to the case. As such, bringing cases there may be a good way of reinforcing General Comment No. 37.

3.2. Africa

Despite the fact that four separate mechanisms were covered for Africa, only seven cases were found among them which addressed freedom of assembly directly, and some of these only covered it quite briefly as one of many claimed rights abuses, while others made only quite general statements about it. While there are some helpful statements about the nature of the right, the obligation of States to protect and facilitate it, and the fact that the right continues to apply despite a failure to comply with notification requirements, for the most part, these are rather general in nature.

There is, therefore, enormous scope for further clarification of practically all standards through these mechanisms. And the fact that the ACmHPR has adopted the Guidelines on Freedom of Association and Assembly in Africa suggests that there is scope for positive elaboration of standards, at least at that mechanism and the ACtHPR.

A further encouraging feature of these mechanisms is their power to spread positive caselaw among themselves and at the national level in Africa. An illustration of this is the case of criminal defamation with the ACtHPR ruling out imprisonment for def-

101 See Human Rights Committee Guidelines on third-party submissions (Advance Unedited Version), https://www.ohchr.org/en/documents/legal-standards-and-guidelines/human-rights-committee-guidelines-third-party-submissions. This is billed as an Advance Unedited Version and indicates that it will be reviewed after five years. Given that it was adopted in 2019, that time period has passed but it still seems to be the latest guidance in this area from the Committee.

102 We understand that the HRC is expecting a flood of cases from Russia now that it is no longer covered by the EHCR, which could be an interesting option for building the HRC's freedom of assembly jurisprudence.

amation in *Lohé Issa Konaté v. Burkina Faso*,[103] in 2014. The ECOWAS Court followed this decision in 2018 in *FAJ and Ors. v. The Gambia*,[104] and a number of national courts then also followed suit. As such, the implications, at least of a clear win at these mechanisms, can be considerable although this is far from guaranteed. On the other hand, at present only eight countries in Africa are subject to the jurisdiction of the ACtHPR and both the ECOWAS Court and EACJ have regional mandates, leaving many countries subject only to the jurisdiction of the ACmHPR.

The research conducted for this report revealed a number of pending cases involving freedom of assembly before the ECOWAS Court and the EACJ, although most also involve other rights claims, notably freedom of expression. Therefore it is not clear how prominently freedom of assembly will feature in the eventual decisions in these cases.

3.3. Americas

While the cases before the IACtHR and IACmHR cover a broader range of issues than the cases before the HRC and African mechanisms, there is still much room for further clarification of standards by the Inter-American mechanisms.

This includes further clarification of the rules relating to the use of force, the precise nature of State obligations to facilitate and protect freedom of assembly and participants in assemblies, legal restrictions on assemblies, including when they become authorization regimes, when dispersals may be legitimate, and the use of private property to conduct assemblies, among other issues. As in Africa, the existence of positive standards, in the form of the publication *Protest and Human Rights*,[105] may assist in the development of standards through caselaw mechanisms.

Additionally, somewhat analogous to Africa, the impact of positive decisions at the IACmHR and especially IACtHR can be quite significant, not only in the State in question but also more generally throughout countries in the region, particularly among Latin American countries.

Another positive here is that there are quite a large number of pending cases before both mechanisms, covering an impressively broad range of freedom of assembly issues, although it was not always entirely clear to us whether it remained timely to intervene in these cases.

103 Application No. 004/2013, 5 Dec. 2014, para. 167, https://www.worldcourts.com/acthpr/eng/decisions/2014.12.05_Konate_v_Faso.pdf.

104 No. ECW/CCJ/APP/36/15, 13 March 2018, https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2016/04/FAJ-and-Others-v-The-Gambia-Judgment.pdf.

105 Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State, September 2019, https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf.

The cases raise, among other issues, questions about State obligations to protect participants in an assembly, legal restrictions on assemblies, including authorizations, physical restrictions on assemblies, the use of force against participants, including under the claim of attempting to control an assembly, and reprisals against individuals for participating in assemblies. This offers a potentially rich panorama of intervention options. On the other hand, the pending cases do not appear to raise significant time, manner, place issues so that may be an area where work earlier on in the litigation cycle is still needed.

Issues relating to land ownership and use, Indigenous peoples' rights and the environment are prominent across Latin America, in particular, and yet there is only a sprinkling of these cases among those decided or pending in the regional mechanisms on freedom of assembly.

It could be that those bringing cases based on other rights, which also raise arguable claims of a breach of freedom of assembly, do not always make those claims. These wider issues may, therefore, be ripe for generating good cases on freedom of assembly (of course along with other rights issues). It might be useful to try to reach out to some groups working on these issues, perhaps particularly at the regional level, to test this idea out and see if there is interest in the idea of including freedom of assembly claims more systematically in their cases, of course only where relevant.

The Inter-American mechanisms have also shown a willingness, in the context of other rights issues, to order relatively innovative remedies. Making claims before courts which are willing to be a bit more imaginative regarding remedies may be particularly important in the context of freedom of assembly, where restoring rights directly can be somewhat elusive.

4. CONCLUSION AND RECOMMENDATIONS

The review of existing caselaw by the target jurisdictions on the freedom of assembly indicates a context of a sprinkling of substantive cases at the different mechanisms (with none at all in a couple), leaving a lot of gaps to be filled.

As discussed throughout the report, some of the key gaps in the current jurisprudence as as follows:

- When an assembly, as such, can be deemed to have lost its peaceful character and is therefore no longer protected
- What the extent of States' obligations to put in place an enabling legal framework for freedom of assembly and to facilitate and provide security for assemblies is, and at what point it is legitimate to impose time, manner or place restrictions on assemblies due to the burden of providing security
- How States should undertake the balancing needed to determine when an assembly is unduly disruptive or behavior has become "reprehensible" (short of violence or destruction of property), such that it may be legitimate to order those undertaking these acts to stop
- What minimum standards apply to notification regimes and at what point have they become unduly onerous or bureaucratic, or tantamount to authorization regimes
- What factors States should take into account before force is used to address a violent assembly or disperse an assembly, and what conditions apply to this, including as to how States should meet their obligation to use force in a proportionate manner
- What accountability framework States should put in place for breaches of freedom of assembly including as to responsibility for officials, redress for individual victims and investigations into serious breaches
- What responsibilities private third parties, in particular companies, have to respect freedom of assembly

This is a long list and there are a significant number of different mechanisms, as well as a few different regions, so litigants and other human rights practitioners seeking to promote the development of standards will need to consider carefully where to focus their efforts. This will also require a consideration of a number of practical matters, some of which we have raised above, such as whether there are pending cases addressing priority issues, potentially providing a more rapid route to the development of standards, and whether some more grassroots work with locally- or regionally-focused civil society organizations may be needed to ground some of this work in local needs, interests and developments.

By highlighting key gaps and areas for development in the current jurisprudence of the regional mechanisms in Africa and the Americas and at the UN level, it is our hope that this report will serve as a practical tool for those litigating and researching freedom of assembly to continue working toward stronger protections of this fundamental right.

ANNEX: METHODOLOGY

The research approach for the methodology mostly consisted of desk research, supplemented by a few interviews with key stakeholders at the mechanisms involved, as well as at civil society organizations focusing on these issues.

A first substantive step in the research was to compile an inventory of relevant standards. This was based importantly on a review of the relevant jurisprudence of different international and regional human rights courts, with a particular focus on the ECtHR, given that it has a far more developed body of jurisprudence in this area. As part of this exercise, a comprehensive list was compiled of the key cases on freedom of assembly at the ECtHR, as well as leading cases from the European Commission on Human Rights and the Court of Justice of the European Union (CJEU). We also compiled a list of all cases decided addressing freedom of assembly from the target jurisdictions for this work and a few other jurisdictions.

However, given that the jurisprudence of the ECtHR and the other mechanisms on freedom of assembly is still far from complete, the review of cases was supplemented with a review of relevant soft-law standards in this area. Some of the key sources for this were guides on freedom of assembly prepared by the ECtHR[106] and the Venice Commission/OSCE,[107] General Comment No. 37 of the UN Human Rights Committee,[108] the report by the Organization of American States (OAS) Special Rapporteur for freedom of expression on *Protest and Human Rights*,[109] and the African Commission on Human and Peoples' Rights' *Guidelines on Freedom of Association and Assembly in Africa*.[110] We also extrapolated by analogy from rights where more standard-setting work has been done, including freedom of expression.

Based on the full inventory of standards, we developed a Classification Guide, as a practical tool for mapping the existing caselaw at the mechanisms under review against the standards. All of the cases from those mechanisms were then mapped against the Guide, via an Excel working document, Classification of Cases. This then allowed us to identify what issues were covered in the jurisprudence of the different

106 *Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association*, 31 August 2022, https://www.echr.coe.int/documents/d/echr/convention_ENG.

107 European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines on Freedom of Peaceful Assembly* (3rd Edition), 15 July 2020, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e .

108 General Comment No. 37 (2020) on the right of peaceful assembly (article 21), 17 September 2020, https://digitallibrary.un.org/record/3884725?ln=en&v=pdf.

109 *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*, September 2019, https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf.

110 2017, https://achpr.au.int/index.php/en/soft-law/guidelines-freedom-association-and-assembly-africa.

mechanisms and where, conversely, there were gaps. Gaps, for current purposes, were defined as areas where different jurisdictions either fail to speak to relevant standards in their case law or do address the issue but in a manner which fails to conform to our inventory of standards.

Given the significant prevalence of gaps in the jurisprudence of all of the target mechanisms, we opted to devote the majority of the report to a general review of the standards, as arranged in the Classification Guide, across all of the mechanisms, with a much shorter section focusing in more detail on the specific gaps in each jurisdiction/region.

FREEDOM OF PEACEFUL ASSEMBLY:

Litigation Gaps and Opportunities at the International and Regional Levels