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African Commission on Human and Peoples' Rights Guidelines on Freedom of Association as Pertaining to Civil Society & Guidelines on Peaceful Assembly

DRAFT

Preamble

Recalling its mandate to promote and protect human and peoples' rights under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling [the relevant resolutions];

Recalling the African Charter on the Rights and Welfare of the Child and the African Charter on Democracy, Elections and Governance;

Noting Articles 10 and 11 of the African Charter on the rights to freedom of association and assembly;

Noting further that the rights to freedom of association and assembly are inextricably intertwined with other rights, including the rights in Articles 2, on the right to freedom from discrimination, 3, on the right to equality before the law and equal protection of the law, 4, on the right to life, 7, on the right to a fair trial, 8, on freedom of conscience, 9, on the right to receive information and free expression, 12, on freedom of movement, and 13, on the right to participate in government, of the African Charter;

Noting further its mandate under Article 45(1)(b) of the African Charter on Human and Peoples' Rights 'to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation';

Recalling the Report of the Study Group on Freedom of Association and Assembly in Africa;

Recalling the jurisprudence of the African Commission on Human and Peoples' Rights pertaining to the right to freedom of association and assembly;

Noting that the rights to freedom of association and assembly are fundamental and protected at the national and international level;

Concerned by arbitrary and excessive restrictions imposed on the rights to freedom of association and assembly;

Acknowledging the vast differences between states in terms of legal systems, socio-economic conditions, and political and historic influences on the regimes governing association and assembly;

Noting that such restrictions limit the potential for a free public sphere and a free and open democracy;

Noting further that restrictions on an independent civil society restrict and prevent human rights associations from forming and from pursuing the advancement of human rights;

Concerned about the practice in some states of hampering the participation of civil society in multilateral arenas;

Concerned also about the 'chilling effect' of reprisals on civil society actors, and **stressing** the obligation on states to provide full protection to those who participate or seek to participate in multilateral arenas;

Concerned by the restrictions and excessive use of force, at times amounting in extrajudicial killing, applied in the context of assemblies;

Recognising the need to formulate and lay down principles and guidelines to further strengthen the respect, protection and fulfillment of the rights to freedom of association and assembly, and to ensure compliance with international norms and principles;

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FUNDAMENTAL PRINCIPLES

- I. The presumption shall be in favor of the exercise of the rights to freedom of association and assembly.
- II. The independence of associations, assemblies, civil society and the public sphere in general shall be ensured; government regulations, oversight and interference therein shall be kept to the absolute minimum necessary to protect other rights-interests.
- III. The participation of free and independent associations, assemblies and civil society in the public political and social life of a community shall be enabled in a free and open manner.
- IV. Any limitations imposed shall be in accordance with the principle of legality, for a legitimate purpose, and a necessary and proportionate means of achieving that purpose within a democratic society.
- V. In policing assemblies, the use of force shall be utilized only as a last resort, to protect the rights of others, in a proportionate manner, and only to the minimum extent necessary to protect the rights of others.
- VI. Authorities with governance oversight over associations and assemblies shall be independent and nonpartisan.
- VII. All procedures shall be clear, simple and transparent.
- VIII. All government decisions shall be clearly and transparently laid out, with any adverse decisions defended by written argumentation on the basis of law.
- IX. Sanctions shall be strictly proportionate and applied only as a matter of last resort and to the least extent necessary.
- X. The right to a remedy shall be protected in cases of potential and actual violation of the rights to association and assembly.

FREEDOM OF ASSOCIATION

I. General

Definition

1. An association is a not-for-profit grouping of persons brought together with a common interest, purpose or activity, which has some degree of institutional, but not necessarily formal, structure, and more than a fleeting existence.

General

2. The right to freedom of association is a right enjoyed both by individuals and by associations.
 - 2.1. The choice to exercise the right to freedom of association shall always be voluntary; individuals shall not be required to join associations, and shall always be free to leave them.¹
 - 2.2. Those founding and belonging to an association may choose whom to admit as members, subject to the prohibition on discrimination.
3. National constitutions shall guarantee the right to freedom of association, which shall be understood in a broad manner consistent with international human rights law.²
4. National legislation on freedom of association shall be drafted with the aim of facilitating and encouraging the establishment of associations and promoting their ability to pursue their objectives.
5. National legislation on freedom of association shall be drafted and amended on the basis of broad and inclusive processes including the inputs of civil society.
6. The legal regimes governing civil society associations, political parties, and labor unions shall be different, and in all cases shall comply with international human rights law.
7. Human rights organizations shall be subject to legal regimes no more strict than those applicable to associations generally, and not-for-profit associations shall under no

1 See UDHR, Article 20(2); UN Human Rights Council, Resolution 15/21 on the rights to freedom of peaceful assembly and of association (6 October 2010); UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 55; and *Nkpa v. Nkume*, Nigerian Court of Appeal (2000), para. 51.

2 Where a constitution states that the essence of this right shall be defined by law, this should in no way be interpreted to allow improper limitation of the right.

circumstances be subject to legal governance more strict than that applied to for-profit entities.³

Informal Associations

8. States shall not compel associations to register in order to be allowed to exist and to operate freely.⁴
 - 8.1. Legislation shall explicitly recognize the right to exist of informal associations.
 - 8.2. Informal associations shall not be punished or criminalized under the law or in practice.
9. Associations shall have the right to register through a notification procedure in order to acquire legal personality and consequent benefits.
 - 9.1. Where such notification is prevented by a restrictive regime, such fact shall not infringe the ability of an association to carry on work in connection with international rights mechanisms.
 - 9.2. Associations that have acquired legal personality shall be free to operate bank accounts in their names.
 - 9.3. Associations that have acquired legal personality shall be free to initiate legal proceedings in their name to protect their financial and property interests.

³ The legal regime may encompass not-for-profit associations as a specific type of corporate organization or as a separate form of organization, provided that the appropriate rules are respected in each case and no confusion is thereby created.

⁴ See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 56.

II. Acquisition of Legal Personality

Establishment Criteria

10. Each person shall be entitled to establish an association together with another, free from limitations falling afoul of the guarantees of equality and nondiscrimination.⁵
 - 10.1. Children and non-nationals shall not be prohibited from founding associations.⁶
 - 10.2. Past criminal conduct shall only be a bar to the formation of an association where the nature of that conduct directly raises reason for concern relative to the true purpose of the association.
 - 10.3. There shall be no internal geographical or territorial limitations on associations, and the same registration procedure shall be employed throughout the country.
11. No more than two people shall be required in order to found an association.⁷

Establishment Procedures

12. The acquisition of legal personality shall be viewed as a right and not a privilege.
13. Registration shall be governed by a notification rather than an authorization regime, meaning that procedures shall be simple, clear, transparent, non-discretionary and non-burdensome.⁸
14. States may require certain basic information from associations in their initial notifications, such as name, names of founding members, physical address (if any), contact information, and basic plans as to the aims and activities of the association.
 - 14.1. Should the information initially submitted be incomplete, the administrative authorities shall reach out to the association to acquire the additional information.
 - 14.2. The law shall not limit the names of associations, unless they are misleading, for instance due to duplicating the names of other associations.
 - 14.3. Associations shall inform the authorities when they amend or change their objectives; they shall not however be penalized solely for failing to do so.

⁵ See id. para. 54.

⁶ Children's right to found associations shall be interpreted in accordance with their evolving capacities.

⁷ See id.

⁸ See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 57-8, 60. It is reasonable to put in place notification requirements, in order to establish a fixed register of associations possessing legal personality.

15. Receipts of confirmation shall be issued to associations at the time that they submit their notifications.

15.1. Should the authorities fail to provide receipts, internal mailing records and copies of the relevant documents shall suffice as evidence of submission of notification.

16. Associations shall not be required to register more than once or to renew their registration.

17. A registration fee may be imposed to cover administration fees, provided that this fee is not such as to deter any association from registering in practice.

17.1. In the case of associations without sufficient financial means, registration fees shall be waived.

Administrative Authority

18. The body that receives notifications as to the formation of an association shall be impartial and apolitical. Only one body should be tasked with registering associations.

19. Registration procedures shall be simple and straightforward, without discretionary components. Any decisions that are made shall be governed by clear legal criteria.

19.1. The administrative authority in charge of registration shall make sure that the procedure and its decisions are accessible and transparent.⁹

19.2. The law shall specify a reasonable period of time in which the authorities may respond to an association's notification – in no cases more than 4 months, and ideally a briefer period. During the time in which notification is pending, associations may operate freely as informal associations. At the close of this period or earlier the authorities shall provide the association with official documentation attesting to its legal status. Should the authorities fail to do so, the association's initial receipt of application

⁹ The authorities shall facilitate the process of registration, especially for associations that may wish to form representing marginalized communities.

Assistance shall be provided to those who require it.

Registration procedures shall be translated into local languages.

A decentralized system of offices capable of receiving registration – operated, for instance, through local government centers – shall be created throughout the country.

Online registration shall be enabled where possible.

Resources shall be devoted to ensuring the development of capacity in such areas in line with the principle of progressive realization.

The administrative authority shall maintain an easily accessible database of registered associations, as well as information on numbers of accepted and rejected applications.

The database shall include the reasons proffered for any rejections.

Such information shall be made available in print form, and ideally online, in accordance with the principle of progressive realization.

submission, or mailing records and copies of the relevant documents, shall provide sufficient evidence as to the association's legal status following the passage of the stipulated period of time.¹⁰

19.3. Should the administrative authority refuse to register an association, it shall provide clear, legally substantiated reasons for its decision. The association shall be able to challenge that decision, including through prompt appeal to a court.¹¹

19.4. In no cases shall an association be prevented from registering through being required to submit documents it can only obtain from the authorities, where the authorities do not promptly and effectively supply such documents.

20. The authorities shall ensure easily accessible access to information regarding notification procedures.

¹⁰ Associations shall be free to declare their legal status publicly following the passage of the requisite period.

¹¹ See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 61-2.

III. Purposes and Activities

21. Associations shall determine their purposes and activities freely.
22. Restrictions placed by states on permissible activities shall be clearly and narrowly defined in law, be for a legitimate purpose, and be necessary and proportionate in relation to that purpose as understood in the light of democratic principles and international human rights law.¹²
 - 22.1. The only acceptable limitations are relative to engagement in for-profit activities, anti-democratic activities, incitement to hatred, discrimination, establishing an armed group, or other activities characterized as unlawful under international human rights law. Such limitations shall be strictly interpreted and not abused to target associations of which political authorities disapprove.
 - 22.2. Fundraising initiatives to support the association's not-for-profit activities shall not be understood as violating the not-for-profit principle.
 - 22.3. Limitations on discrimination shall not be interpreted to prohibit affirmative action designed to promote and enhance the role of minorities and marginalized and discriminated-against communities within society and within particular associations; on the contrary, active measures to enhance the participation and role of such communities are to be encouraged.
 - 22.4. Law or policy shall not prohibit the conduct of the activities of associations within particular geographic or territorial localities.
23. There shall be no blanket restrictions on permissible activities.
 - 23.1. Associations shall be expressly permitted, *inter alia*, to engage on matters relating to politics, public policy, and human rights at the national and international level,¹³ as well as to conduct fundraising and public opinion surveys.
 - 23.2. The receipt of foreign funding as such shall in no way affect an association's ability to engage in the full range of legitimate activities.
 - 23.3. In no cases shall permission be required to undertake particular activities.
24. Associations shall not suffer discrimination of any kind on the basis of their purposes and activities, where those purposes and activities do not fall within the legitimate grounds for limitation discussed above.

¹² This means, *inter alia*, any limitations imposed shall not be overly broad or vague. For overturning of an illegitimate refusal of registration, see Attorney General of Botswana v. Thuto Rammoge and others, Botswana Court of Appeal (Mar. 16, 2016).

¹³ See Articles 1 and 5(b) of the UN Declaration on Human Rights Defenders.

- 24.1. The rights to freedom of association and expression protect expression and activities that offend, shock, or disturb; criticism of government action; calls for a rights-promoting peaceful change of the constitutional or legislative order; advancement of minority rights and the rights of discriminated-against, marginalized and socially vulnerable communities; peaceful calls for regional autonomy; and challenging majority religious views.¹⁴
- 24.2. States shall respect, in law and practice, the right of associations to carry out their activities, including those denoted above, without harassment, intimidation or reprisals of any kind.¹⁵ Impermissible harassment includes attempts to tar the reputation of particular associations in the public media, whether carried out directly or through media proxies.¹⁶
- 24.3. States shall protect associations at particular risk from interference, harassment or attack by third parties and non-state actors.¹⁷

14 See, e.g., UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 64; *International Pen and Others (on behalf of Saro-Wira) v. Nigeria*, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998), paras. 107-10 (finding a violation of the right to freedom of association where the government took action against an association due to disapproval of its actions); *Vona v. Hungary*, Eur. Ct. H.R., App. No. 35943/10 (9 July 2013), para. 53.

15 On state harassment of individuals and associations due to their adoption of positions political authorities disapproved of, see *Aminu v. Nigeria*, Comm. No. 205/97 (2000), paras. 22-3; *Huri-Laws v. Nigeria*, Comm. No. 225/98 (2000), paras. 47-9; *Ouko v. Kenya*, Comm. No. 232/99 (2000), paras. 29-30.

‘Intimidation or reprisal’ means any form of violence, threat, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary or detrimental action or threat related to status, or legitimate work or activity, including proposed, attempted or imputed work or activity.

16 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc A/HRC/23/39 (14 April 2013), Section 20.

17 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 63-4.

IV. Participation

25. Governments shall establish mechanisms that enable associations to participate in the formation of law and policy through dialogue and consultation with public authorities.

25.1. Participation shall be enabled at the local, regional, national and international levels.

25.2. Participation opportunities shall include the ability for associations to submit inputs concerning draft laws or proposed changes to laws or constitutions, where necessary.

25.3. Associations shall be able to comment publicly on reports submitted by states to international supervisory bodies, including prior to the submission of the reports in question.

25.4. Associations shall always actively be consulted on potential amendments affecting the legal and regulatory framework governing associations in particular.

25.5. Consultations shall be inclusive, shall reflect the diversity of associations, populations and points of view in a society, and shall include associations with points of view critical of government proposals.

25.6. Consultations shall be enabled through timely and detailed access to the relevant official information, with sufficient time allowed for associations to formulate and express their views.

25.7. Consultation procedures shall take account of the fact that certain persons and groups face challenges in accessing information and disseminating their points of view, for instance due to marginalization, illiteracy and/or lack of internet access; proactive steps shall be taken to overcome these obstacles.

V. Oversight

Oversight Bodies

26. Matters relating to the oversight of associations shall be overseen by a single impartial and nonpartisan administrative body, in accordance with clear criteria laid out by law in accordance with international human rights standards and with sharply constrained discretion.

Oversight Powers

27. The authorities shall not have excessive powers of oversight that would infringe on the right to freedom of association.¹⁸

27.1. In particular, associations shall not be required to transmit such details as information as to the minutes of their meetings, lists of their members, or personal information as to their members to the authorities.

27.2. Under no circumstances shall law or practice mandate the attendance of state agents at non-public meetings of associations.

27.3. State agents may attend the meetings of associations however where the association freely invites such participation.

27.4. Governmental inspections aimed at verifying the compliance of associations with their own internal procedures are inappropriate, as it is for associations themselves to determine these matters internally.

28. External intervention in the running, management or operations of associations shall only be permitted in cases of serious violations of the law.

28.1. Ensuring the rights of individual members shall normally be achieved through legal proceedings those members might initiate.

28.2. Inspections shall only take place where there is serious suspicion of a serious legal violation, and shall only serve the purpose of confirming or rebutting that suspicion.

28.3. Serious violations are limited to those delimited above as the grounds for limitation to the purposes of associations, namely for-profit activities, anti-democratic activities, incitement to hatred, discrimination, establishing an armed group, or other activities characterized as unlawful under international human rights law.

¹⁸ See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 64-5.

- 28.4. Regulations on inspections shall clearly define the powers of inspecting officers, ensure respect for privacy, and provide redress for any violations committed through the inspection process.
- 28.5. Any requirements imposed pursuant to an inspection shall be reasonable.
- 28.6. In no cases shall inspections be utilized in order to harass or intimidate associations of which political authorities disapprove; should such occur, sanctions shall be levied against the responsible parties in a court of law.
29. Authorities shall respect the right to privacy of associations and shall not subject them to undue surveillance.
- 29.1. The counter-terrorism framework shall not be used to justify surveillance of lawful associations, and associations and individuals who have their rights to freedom of association and privacy violated through illegitimate surveillance shall be afforded appropriate redress.¹⁹

Internal Organization

30. Associations shall be self-governing and free to determine their internal management structure and rules for selecting governing officers.
- 30.1. Law or regulation shall not dictate the internal organization of associations, beyond basic provisions providing that non-discriminatory and rights-respecting principles be followed.
- 30.2. Associations shall not be required to obtain permission from the authorities to change their internal management structure or other elements of their internal rules.
- 30.3. Public authorities shall not interfere with associations' choices of managing officers, unless such persons are barred by national law from holding the positions in question on the basis of legitimate grounds as interpreted by international human rights law.²⁰
- 30.4. The law shall not require that physical meetings or the like be held.²¹

19 See, e.g., UN Special Rapporteur on Freedom of Opinion and Expression, Report to the Human Rights Council, UN Doc A/HRC/23/40 (17 April 2013), paras. 91-2; Privacy International, *Their Eyes on Me: Stories of Surveillance in Morocco* (2015).

20 Such as, of example, where individuals previously convicted of fraud are barred from holding financial management positions.

The law may require the identification of governing officers.

21 Both because this is an unnecessary requirement and given the potentials offered by information technology.

VI. Financing

Acquisition of Funding

31. The law shall clearly state that associations have the right to seek and receive funds freely in compliance with not-for-profit aims.²²
 - 31.1. Associations shall be free to conduct fundraisers of various sorts, including engaging in economic activities designed to support the aims of the organization.
 - 31.2. Associations shall be free to acquire support in the form of cash as well as other forms, including but not limited to property, goods, services and investments.
 - 31.3. Restrictions placed on funding shall be clearly codified in law, be necessary and proportionate ways of achieving a legitimate aim within a democratic society, and be in accordance with international human rights standards.
 - 31.4. In general, associations shall be subject only to the same laws governing the generation of income and finance as others.²³
32. Associations shall generally be free to seek and receive funds from foreign governments, international organizations, transnational donors and other external entities.²⁴
 - 32.1. States shall not institute a regime of authorization relative to the receipt of funding.²⁵
 - 32.2. States shall not prohibit outright foreign funding, require transfer of funds through a central governmental source, impose excessive reporting requirements relative to foreign funding, ban foreign-funded associations from otherwise legitimate activities, stigmatize or delegitimize foreign-funded associations, initiate aggressive auditing

22 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 67-72. For more detail, see UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc A/HRC/23/39 (24 April 2013), paras. 8-42.

23 Where a particular activity requires a license, associations shall naturally be expected to obtain such.

24 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc A/HRC/23/39 (24 April 2013), paras. 8-42.

25 Associations shall, at most, be expected to notify prior to the receipt of funds; the relevant procedure should be clear and straightforward, approval assumed, and any ultimate decisions in the hands of courts rather than administrative authorities. See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc A/HRC/23/39 (24 April 2013), para. 37. See also Venice Commission, Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, CDL-AD(2013)023 (18 June 2013), para. 43.

campaigns, or impose criminal or other excessive penalties on the basis of receipt of foreign-funding as such.

- 32.3. Restrictions may be placed on funds from external sources in limited circumstances where those restrictions are clearly codified in law, impartially applied, necessary and proportionate in the pursuit of a legitimate aim within a democratic society, and in accordance with international legal standards.²⁶
33. Associations shall be subject to the same general laws governing money laundering, fraud, and the like as individuals and for-profit enterprises.
34. Income generated shall not be distributed as profits to the members of not-for-profit associations. Associations shall however be able to use their income to fund staff and reimburse expenses pertaining to the activities of the association.²⁷

Public Support

35. States should provide tax benefits, and public support where possible, to not-for-profit associations.
36. Should a state choose to distinguish certain not-for-profit associations as public good associations, subject to additional benefits, the act of categorization shall be neutral and nonpartisan, and shall be carried out in accordance with a clear set of criteria that do not allow for discretion or selection of certain associations on the basis that their activities or members are particularly favored by political authorities.
37. States that provide public support to associations, including in the form of tax benefits, shall ensure that funds and benefits are distributed in a neutral and nonpartisan manner, on the basis of clear and objective criteria, and that the granting of funds or benefits is not used as a means for the government to exert undue influence over the civil society sphere.
38. Public support shall promote the equal ability to participate of all groups and individuals in society through support for associations working with and for minority, marginalized, socially-vulnerable and discriminated-against communities.

26 Combatting corruption, terrorist financing, money-laundering, trafficking or the like constitute legitimate aims in this context. The measures taken to fulfill such aims, however, shall still be proportionate and carefully targeted, shall be the least intrusive means to fulfill such objective, shall not be overly burdensome, and shall not be used as cover for illegitimate purposes, such as to prevent funding to associations of which the authorities disapprove. Funding for human rights organizations in particular shall not be targeted under such pretexts.

27 Regulations preventing excessive salaries, which appear a means of bypassing engagement in for-profit activities, are however reasonable.

- 38.1. Such groups may include organizations involved in human rights protection, policy-making, monitoring and advocacy, and those providing social services.
39. Any body vested with the power to determine state support shall be nonpartisan and independent. The procedures governing the operations of that body shall be clearly laid out by law.
40. Associations shall be involved in the drafting of regulations and policies pertaining to the provision of state support.
41. All forms of state support shall be entirely transparent.
- 41.1. This includes clear publication of the relevant criteria and decision-making process, the amounts of funds awarded, their recipients and the grounds upon which funding decisions were made.
- 41.2. Steps shall be taken in particular to ensure all potentially interested organizations are made aware of the relevant criteria and any steps necessary to become eligible for such funding. Any steps necessary to become eligible for such funding shall not be overly burdensome in relationship to the quantum of funding available.
- 41.3. Additional reporting requirements may be imposed in order to enable effective use and reporting of state funding. Such reporting requirements shall not be overly burdensome in relationship to the quantum of funding available, and shall be the same across organizations receiving similar quantities of funding. Support provided shall cover additional costs imposed by such requirements.
- 41.4. The levels of public funding available, both in total and to particular organizations, shall be clearly stipulated in advance.
42. Associations shall be able to approach the courts for review of a denial of funding if they believe the decision was taken unfairly.

Supervision of Finances

43. Reporting requirements shall be constructed on the basis of the presumed lawfulness of associations and their activities, and shall not interfere with the internal management or activities of associations.
44. Reporting requirements shall not be overly burdensome.
- 44.1. Yearly reporting requirements are adequate – an association shall not be required to report on every project or acquisition of funding. The law shall not require associations to make public their sources of funding other than through such yearly reports. Prior reporting requirements shall not be imposed.

- 44.2. Reporting requirements shall be entirely laid out in a single piece of legislation, and reports shall only be required to a single governmental body.
 - 44.3. Any yearly reporting requirements shall not require extensive details, but shall rather be aimed at ensuring financial propriety, including through basic description of association projects and activities as necessary to account for the use of funds.
 - 44.4. The rights to confidentiality and privacy of associations, their members and those on whose behalf they work shall be respected throughout the reporting process.
 - 44.5. Reporting requirements shall be proportionate to the size and scope of the organization. In no circumstances shall not-for-profit associations be subjected to greater reporting requirements than for-profit entities.
 - 44.6. Reporting shall be facilitated to the extent possible through information technology tools.
 - 44.7. Reporting requirements shall not be used as a way to limit or target associations, including, *inter alia*, by utilizing the information therein to publicly condemn associations or by attempting to sanction or punish associations merely for altering, expanding or focusing their activities in relationship to the mandates they originally set out.
45. Where audits occur, support in order to carry out the audit shall be provided where financially necessary.
 - 45.1. In no circumstances shall an audit of a not-for-profit association be more burdensome than an audit of a for-profit association of comparable means.
 - 45.2. In no circumstances shall an audit result in the harassment of an association.
46. Neither reporting nor auditing requirements shall be so burdensome as to significantly diminish the substantive activities of a not-for-profit association.

VII. Federations and Cooperation

Absence of Government-Run and Mandatory Associations

47. Whether or not to create federations shall be determined freely by civil society actors; the state shall not stipulate by law the existence of particular or exclusive regional or national federations of associations.²⁸
48. The law shall not stipulate mandatory government membership of particular associations.²⁹
49. Governments and officials shall refrain from interfering in domestic and international civil society space through the creation, operation or provision of covert support for non-independent NGOs.

Federations and Cooperation

50. States shall allow the free creation, joining and operation of informal networks of associations and cooperation among associations, both nationally and internationally.³⁰
51. Associations shall be free to create national and international federations with legal status through procedures substantively equivalent to those through which associations are created, and free to join such international federations as exist.³¹

28 See Civil Liberties Organisation (in respect of the Nigerian Bar Association) v. Nigeria, Comm. No. 101/93 (1995), paras. 14-6.

29 See id.

30 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Exercise of the rights to freedom of peaceful assembly and of association in the context of multilateral institutions), UN Doc A/69/365 (1 September 2014), para. 96.

31 See id.

VIII. Foreign and International Associations

52. An association that is incorporated under the laws of one country (a ‘foreign association’) that has, or intends to have, operations, programs, or assets in another country shall be allowed to establish a branch office in that other country through a procedure substantively equivalent to that required for national associations, and shall be permitted to enjoy all of the rights and be subject to all of the same lawful requirements as local associations.³²
- 52.1. While the procedure through which an international association obtains legal status may be different from that applying to national associations, the procedure shall be no more burdensome, and once legal status is obtained, provisions substantively similar in terms of fairness and equity to those that apply to national associations shall apply to international ones.
53. An association that is established in one country shall be allowed to receive cash or in-kind donations, transfers or loans from sources outside the country as long as all generally applicable foreign exchange and customs law are satisfied.

³² See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 59.

IX. Sanctions and Remedies

54. Governments shall not impose criminal sanctions in the context of laws governing not-for-profit associations.³³
- 54.1. All criminal sanctions shall be specified within the penal code and not elsewhere.
- 54.2. Civil society shall not be governed by provisions of criminal law different from the generally applicable provisions of the penal code.³⁴
55. Liability shall not be improperly imputed from associations to individuals or vice versa.³⁵
- 55.1. Offenses committed by particular members of associations shall not be taken as grounds to penalize the association itself, where the official decision-making structure of the association was not employed to pursue those offenses. Similarly, offenses committed by an association, i.e. through its officers, shall not be imputed to members of the association who did not take part in the offenses in question.
56. Suspension or dissolution of an association by the government may only be applied where there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law and as a matter of last resort.³⁶
- 56.1. Suspension may only be taken following court order, and dissolution only following a full judicial procedure and the exhaustion of all available appeal mechanisms. Such judgments shall be made publicly available and shall be determined on the basis of clear legal criteria in accordance with international human rights law.

33 On the related issue of the inappropriate application of criminal measures to associations, see *Malawi African Association and others v. Mauritania*, Comm. Nos. 54/91, 61/91, 98/93, 164-196/97 & 210/98 (2000), paras. 106-7.

34 Relating, for example, to fraud, embezzlement and the like.

35 See *International Pen and others (on behalf of Saro-Wiwa) v. Nigeria*, Comm. Nos. 137/94, 139/94, 154/96 & 161/97 (1998), para. 108.

36 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 75; see also, e.g., *Koreenko et al. v. Belarus*, UN Human Rights Committee, Comm. No. 1274/2004 (31 October 2006); and see *Interights and others v. Mauritania*, Comm. No. 242/2001 (2004), paras. 80-4 (concerning the dissolution of a political party, but with implications generalizable across entities protected by the right to freedom of association).

Where an association has, through prolonged inactivity, clearly ceased to exist de facto, the association may be deregistered. This procedure should be distinct from that relative to suspension and dissolution. Demonstration of prolonged inactivity requires clear evidence of multiple years without any activity or meeting whatsoever on the part of the association in question. In no circumstances may deregistration be utilized to remove legal status from an active association. Should deregistration be utilized against an active association, the association and its members have the right to a remedy, including restitution and compensation.

- 56.2. The requisite level of gravity is only reached in cases giving rise to a serious threat to the rights of others and/or of democratic principles.³⁷
57. Sanctions shall not be disproportionate or aimed at tightly controlling or penalizing associations without strong grounds.
- 57.1. In no cases shall associations be subject to sanctions on the basis that their activities breach their internal regulations, where the activities in question are otherwise lawful.
- 57.2. Monetary penalties shall be avoided to the extent possible. Where associations have failed to comply with a particular state requirement, the remedy shall be compliance with that requirement. Prior to the imposition of sanctions, a warning shall be issued and a reasonable period of time in which to comply with the regulations in question provided, where circumstances so allow.
58. Commencement of legal appeals shall suspend the enforcement of sanctions until the appeals process has run.³⁸
59. The burden of proof relative to sanctions against associations shall always be on the state.
60. Where the right to association has been infringed, the association as well as its members shall have due access to a remedy.
- 60.1. In addition to restitution remedying the specific harms inflicted, associations shall have the right to compensation for any and all damages that may have occurred.³⁹
- 60.2. Where the authorities pursue warrantless sanctions, or have pursued sanctions with the aim of harassing particular associations, those responsible for prosecuting the cases in question shall be held liable for violating the right to freedom of association.
- 60.3. The right to a remedy also requires other measures, such as satisfaction and guarantees of non-repetition, as and where appropriate.
61. Laws governing the dissolution of associations shall ensure that any assets flowing from such dissolution do not result in private profit and that, should they be distributed to other civil society organizations working in a similar field, they be distributed in a fair and nonpartisan manner, in compliance with the principles relating to public support discussed above.

37 Serious threat to the rights of others and/or democratic principles exists for example where the association in question aims at large-scale, coordinated intimidation of members of the general population, for instance on the basis of a racially-motivated position. See, e.g., *Vona v. Hungary*, Eur. Ct. H.R., App. No. 35943/10 (9 July 2013), para. 57.

38 This does not apply to injunctions.

39 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 81.

61.1. Where the dissolution is voluntary, the rules of the association shall determine the manner in which its assets are distributed, subject to the limitation on private profit.

FREEDOM OF PEACEFUL ASSEMBLY

I. General

Definition

1. An assembly is an intentional and temporary gathering in a private or public space for a specific purpose.⁴⁰
 - 1.1. Assemblies may be static, as in the case of meetings, sit-ins and pickets; moving, as in the case of parades, processions and funerals; or vary between the two, as with some demonstrations.

Peaceful nature

2. The right to freedom of assembly extends to peaceful assembly.
 - 2.1. Isolated acts of violence do not render an assembly as a whole non-peaceful; wherever possible the authorities shall take the measures necessary to remove the individual or individuals in question without dispersing the assembly.⁴¹
 - 2.2. Passive acts shall not be understood as non-peaceful.⁴²
 - 2.3. 'Peaceful' shall not be interpreted to include conduct that may annoy or give offence or conduct that temporarily hinders, impedes or obstructs the activities of third parties.

General

3. National constitutions shall guarantee the right to freedom of assembly, which shall be understood in a broad manner consistent with international human rights law.⁴³
4. States shall enact laws on freedom of assembly designed to protect the right against arbitrary interference.⁴⁴

40 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 24.

41 As the European Court has put it, "an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behavior." *Ziliberg v. Moldova*, Eur. Ct. H.R., Admissibility (2004).

42 Including, for example, picket lines, protests involving the blocking of traffick, or involving individuals chaining themselves together or to inanimate objects in order to prevent the commission of certain acts.

43 Where a constitution states that the essence of this right shall be defined by law, this should in no way be interpreted to allow improper limitation of the right.

- 4.1. Laws shall not contain excessive regulation the effect of which is to restrict the right.
- 4.2. Legislation and regulations on assemblies shall be drafted and amended in close, free and open consultation with human rights groups and other parties concerned with the free exercise of the right.
5. The right to participate in assemblies shall be enjoyed freely and without coercion.
 - 5.1. No one shall be compelled to participate in an assembly.
6. The right to freedom of assembly applies to all individuals, groups, peoples, unregistered and registered associations, and others.
 - 6.1. Individuals to whom the right to freedom of assembly applies include children, stateless persons, refugees, foreign nationals, asylum-seekers, migrants and temporary visitors.⁴⁵
7. The right to freedom of assembly applies to meetings on private as well as public property.
8. The privatization of public spaces shall not attenuate the right to assemble there.
 - 8.1. While owners of private property may restrict access to that property, where the property forms a public space the right to freedom of assembly shall be understood to attenuate that private control.⁴⁶
9. The right to freedom of assembly and the right to freedom of expression together protect meetings in online spaces.

44 Regulating freedom of assembly primarily through the penal code – as still the case in some states – is particularly injurious to the enjoyment of the right.

45 See UN Human Rights Council, General Comment 15: The position of aliens under the Covenant.

46 As for example in the case of a shopping center. The availability of suitable and effective spaces for public assemblies such as that in question shall be looked to in making the relevant determination.

II. Notification Regime

10. Participating in assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state. A system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens.⁴⁷
 - 10.1. A notification regime requires that the presumption is always in favor of holding assemblies.
 - 10.2. A notification regime requires that assemblies not be automatically penalized, through dispersal or sanction, due to failure to notify, subject to the provisions further detailed below.
 - 10.3. Notification regimes shall be effective in law and in practice.
 - 10.4. Lack of notification shall not be understood to make an assembly ‘illegal.’
11. Assembly organizers shall not be required to submit notification too far in advance, or to fulfill overly bureaucratic procedures.⁴⁸
 - 11.1. Notification may be required far enough in advance for an exchange of views as to any possible conditions, and for the relevant authorities to prepare.
12. Following notification, should the authorities fail to respond, the organizers shall be able to proceed as if they had received approval.
13. Should the authorities receive notification from multiple groups aimed at holding assemblies in the same space at the same time, efforts shall be made to facilitate multiple concurrent assemblies.
 - 13.1. Where this is impossible, an impartial and reasonable means shall be found to allocate the space.⁴⁹

47 Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, based on best practices and lessons learned, UN Doc A/31/66 (Feb. 4, 2016), para. 21. See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 26, 28. See also *Inspector-General of Police v. All Nigeria Peoples Party and others*, Nigeria Court of Appeal (2007), paras. 16, 23, 25; *New Patriotic Party v. Inspector General of Police*, Ghana Supreme Court (2000), paras. 26, 38-39, 48, 54-5; *Amnesty International and Others v. Sudan*, Comm. Nos. 48/90, 50/91, 52/91 and 89/93 (1999), paras. 81-82 (the Commission here observes moreover that the right to freedom of assembly derives in practice from the right to association; the opposite is clearly the case as well).

48 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc A/HRC/23/39 (14 April 2013), paras. 51-5, 57.

14. Exceptions shall be created for small and spontaneous assemblies.⁵⁰

14.1. Spontaneous assemblies include assemblies that occur as immediate reactions to events, and planned assemblies that necessarily occur within a tighter deadline than that required relative to notification.⁵¹

15. In no case shall peaceful assembly organizers be penalized or an assembly dispersed merely for failure to notify.⁵²

16. Responsibility for receiving notifications and taking decisions concerning the regulation of assemblies shall lie in the hands of a single, neutral, nonpartisan administrative body.⁵³

16.1. The composition of the regulatory authority shall be broadly representative of the diversity in society.

16.2. The authority shall make its procedures, including its decision-making procedures, as clear, transparent and readily available as possible.⁵⁴

16.3. The administrative authorities shall have a procedure for receiving information from individuals who believe their rights will be negatively affected by particular assemblies.

16.4. The authorities charged with administering assemblies shall be adequately trained in human rights law and aware that their primary task is to facilitate peaceful assemblies.

49 According priority to the first application received is an appropriate method in such instances, unless such an application was submitted with the clear intent of preventing the later assembly from being held in the form desired by its organizations.

50 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 28-9.

51 Planned spontaneous assemblies are justified in circumstances in which an immediate response to a current event is warranted in order to achieve the aim of the assembly in question.

Even within a long-running campaign, there may be particular events requiring the organization of spontaneous assemblies of such a sort.

Where some degree of planning is involved, organizers of such assemblies may still be requested to notify the authorities as soon as reasonably possible, in order to allow the authorities to better fulfill their positive obligations.

52 See, e.g., *Bukta v. Hungary*, Eur. Ct. H.R. (2007), para. 36; *Oya Ataman v. Turkey*, Eur. Ct. H.R. (2006), paras. 41 & 43; *Kuznetsov v. Russia*, Eur. Ct. H.R. (20078); and *Bicici v. Turkey*, Eur. Ct. H.R. (2010), para. 56.

53 The public shall be clearly informed as to the body in question.

54 Assistance shall be provided where necessary to help assembly organizers with the notification process. Decisions of the body, including acknowledgement of assemblies without conditions, shall be made publicly available on an ongoing basis. An annual report shall also be prepared, including decisions and statistics on notifications received as well as conditions imposed.

III. Limitations

Content

17. States shall fully respect in law and practice the right to freedom of expression through assembly. Discrimination among assemblies based on the content of the expression involved is illegitimate.
 - 17.1. Particularly restrictive measures shall not be adopted relative to assemblies on the basis of their content, save where the aim of the assembly is a direct assault on the rights of others as in the case of hate speech.
 - 17.2. General law on assemblies shall also be applied to assemblies associated with election campaigns.⁵⁵
18. The content aimed at in and through assemblies is protected by the right to freedom of expression, and includes content that may give offense or be provocative.⁵⁶
 - 18.1. The peaceful nature of an assembly shall not be questioned on the basis of the provocative content of the assembly.
 - 18.2. Hate speech and the incitement of violence are not protected and shall be prohibited.⁵⁷
 - 18.3. Resort to hate speech by particular individuals in the context of assemblies shall not lead to dispersal of the assembly as a whole, but rather to appropriate measures against the persons in question, either during or after the event as appropriate.
 - 18.4. Involvement in and encouragement of activity that violates the laws of a country is not a grounds for limitation of assemblies where the laws in question are in violation of international human rights law.⁵⁸
19. Speech addressing matters of public concern, public interest or political or policy affairs, including criticism of the state or state officials, is given maximum protection under the right to freedom of expression.⁵⁹

55 This language is aimed to address the fact that some states apply more restrictive regimes in this context.

56 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc A/HRC/23/39 (14 April 2013), para. 59; International Pen and Others (on behalf of Saro-Wira) v. Nigeria, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998), para. 110.

57 For more on the standards on hate speech in international law, see the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012).

58 See OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly (2nd ed. 2010), para. 95.

59 See, e.g., Human Rights Committee, Concluding Comments on Belarus, UN Doc CCPR/C/79/Add.86 (1997), para. 18: "Decree No. 5 of 5 March 1997 imposes strict limits on the organization and preparation of demonstrations, lays down rules to be observed by demonstrators, and bans the use of

20. The state shall not discriminate against assemblies on the basis of other illegitimate grounds, including sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, migration status, property, socio-economic status, birth, disability, age, sexual orientation or gender identity.⁶⁰
 - 20.1. Non-nationals such as stateless persons, refugees, foreign nationals, asylum-seekers, migrants and temporary visitors all possess the right to freedom of assembly,⁶¹ and may assemble, *inter alia*, to protest and call for changes to immigration laws and policies.⁶²
 - 20.2. Assemblies taking place as part of transnational protest movements are also protected by the right.
21. The right to freedom of expression in the context of assemblies protects the manner in which assemblies are conducted as well as the paraphernalia used, including flags, masks, symbols and other objects.
 - 21.1. Such symbols may be restricted where they are intrinsically and exclusively associated with acts of hate speech however.
 - 21.2. While masks are generally protected, wearing a mask for the purpose of engaging in behavior recognized as unlawful under international human rights standards may be individually penalized.
22. The actions of assemblies shall be reported freely, impartially and without discrimination in the media of a country.

Conditions

23. No blanket prohibitions on assemblies shall be imposed.⁶³
 - 23.1. Blanket prohibitions include the banning of assemblies at certain times or in particular locations.

posters, banners or flags that ‘insult the honour and dignity of officials of State organs’ or which ‘are aimed at damaging the State and public order and the rights and legal interests of citizens.’ These restrictions cannot be regarded as necessary in a democratic society to protect the values mentioned in Article 21 of the Covenant.”

60 Children’s right to organize assemblies applies with due regard to their evolving capacities. Discriminatory impact is prohibited along with direct discrimination.

61 See UN Human Rights Council, General Comment 15: The position of aliens under the Covenant.

62 See, e.g., *Cisse v. France*, Eur. Ct. H.R. (2002), para. 50.

63 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 39; *Malawi Law Society and Others v. President and others*, Malawi High Court (2002), para 30.

- 23.2. The holding of assemblies in public areas in the proximity of residential areas as well as the holding of nighttime assemblies shall be handled on a case-by-case basis, rather than prohibited as such.⁶⁴
24. States shall impose no external limitations that improperly restrict the right to freedom of peaceful assembly, such as improper limitations on freedom of movement, including transnational movement.
25. Any limitations imposed shall comply with the principles of lawfulness, be in support of a legitimate interest and be necessity and proportionality in a democratic society.⁶⁵
- 25.1. The law shall not allow assemblies to be limited based on vague or inappropriate grounds.⁶⁶
26. Assembly shall be recognized as a core right of no less value than other uses of public space, including commercial activity and the free flow of traffic.⁶⁷
27. Assemblies may be held in any public space.⁶⁸
- 27.1. Urban planning shall take account of the need to ensure the right to freedom of assembly, and barriers designed to prevent the effective exercise of the right, including in symbolically important locations, shall not be constructed.
- 27.2. Conduct of an assembly will often temporarily hinder, impede or obstruct the activities of third parties; the assembly shall not be dispersed or prevented on such grounds.
28. The temporal component of assemblies shall always be assessed with regard to the need to ensure the right to freedom of assembly and the hardship actually imposed on others.
- 28.1. The fact that assemblies are defined as ‘temporary’ does not mean that they may be limited to any particular timelines.⁶⁹

64 In no cases should the fact that such cases are handled on a case-by-case basis lead to unjust discrimination among assemblies for instance on the basis of their purposes.

65 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 39.

66 Such as where they ‘impede the interests of the state.’

67 See, e.g., UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 41; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc A/HRC/23/39 (14 April 2013), para. 67; *Balcik v. Turkey*, Eur. Ct. H.R. (2007), para. 52; *Ashughyan v. Armenia*, Eur. Ct. H.R. (2008), para. 90; Int.-Am. Comm. H.R., Report of the Office of the Special Rapporteur for Freedom of Expression (2008), para. 70.

68 Including public parks and squares, streets or paths of any size and intended for any form of transit, and publicly-owned buildings including auditoriums, stadiums and universities.

69 For example, the erection of protest camps or other non-permanent constructions.

29. Authorities shall always seek to facilitate assemblies at the organizers' preferred location at their preferred date and time.⁷⁰
- 29.1. When imposing limitations on location, time or date, the authorities shall propose a suitable alternative time, in which context the message the assembly seeks to convey is still capable of being effectively communicated to those to whom it is directed.
- 29.2. Even when imposing restrictions, the authorities shall facilitate the ability of an assembly to take place within sight and sound of its target audience.
- 29.3. Physical security installations around politically and symbolically important locations may violate the right to freedom of assembly in this context where the security gain is outweighed by the extent to which the barriers prevent the assemblies from taking place in an appropriate location.
- 29.4. Assemblies shall not be relocated to out of the way locations.
30. Any conditions imposed shall relate closely to the particular concerns raised and be narrowly tailored.
- 30.1. Such conditions shall promote a substantial interest that would not be achieved absent the restriction.
- 30.2. The routine application of conditions, without individuated proportionality assessment, is illegitimate. Application of conditions requires an objective and detailed evaluation of the circumstances in question.
- 30.3. Reasons adduced to impose conditions shall be relevant, sufficient, convincing and compelling and based on an acceptable assessment of the relevant facts; suspicion or presumptions cannot suffice.⁷¹
- 30.4. The fact that conditions may be imposed as a matter of last resort during an event shall limit the extent to which conditions are imposed prior to assemblies in purported response to future contingencies.⁷²
- 30.5. Conditions may be imposed to protect the rights and freedoms of others.⁷³

70 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 40; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc A/HRC/23/39 (14 April 2013), paras. 56, 60, 65-6.

71 See, e.g., *United Communist Party of Turkey v. Turkey*, Eur. Ct. H.R. (1998), para. 47; *Stankov and the United Macedonian Organisation Illinden v. Bulgaria*, Eur. Ct. H.R. (2001), para. 87; *Christian Democratic Peoples' Party v. Moldova*, Eur. Ct. H.R. (2006), para. 71; *Makmudov v. Russia*, Eur. Ct. H.R. (2007), paras. 64-5; *Rosca, Secareanu and others v. Moldova*, Eur. Ct. H.R. (2008), para. 40.

72 Administrative authorities may make note of such possibilities in their communications to assembly organizers and law enforcement.

31. Any conditions imposed shall be communicated promptly in writing to the organizers of the event, along with an explanation of the rationale for the condition.⁷⁴
- 31.1. The law shall set out a clear procedure through which, prior to the imposition of such conditions, the authorities shall reach out to assembly organizers with their concerns in such a manner as to facilitate the sharing of information and the production of a mutually positive and agreed approach. Organizers shall not be compelled or coerced during this process.
- 31.2. Where time allows, a procedure of administrative review shall be available in cases of conflict.
- 31.3. Prompt recourse to an independent court shall be available to assembly organizers to challenge the decision of the authorities should they wish to do so.⁷⁵
32. Prohibition shall only be used as a measure of last resort where no other less intrusive response would achieve the legitimate aim pursued.
- 32.1. The authorities shall promptly communicate a decision to prohibit an assembly to assembly organizers, together with a clear statement of the legal rationale for their decision.
- 32.2. Prompt resort to an independent court to determine *de novo* any dispute on such a matter between organizers and the state shall be available.
33. The role of law enforcement during the course of an assembly shall typically be merely to enforce prior decisions imposed by the appropriate authorities.
- 33.1. Restrictions may be imposed during the course of an event, where absolutely necessary and in conformity with the standards laid out above, as for instance in cases where the situation rapidly deteriorates and becomes violent.
- 33.2. The grounds under which such restrictions may be imposed by law enforcement authorities shall be clearly laid out by law.
- 33.3. Negotiation and mediation shall be employed prior to imposition of conditions in the course of assemblies where feasible.

73 Thus for example a large and noisy nighttime rally in a residential neighborhood may properly be limited, including through imposing restrictions on sound amplification equipment and lighting and visual effects.

74 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 42; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc A/HRC/23/39 (14 April 2013), paras. 47-8, 64.

75 See, e.g., *New Patriotic Party v. Inspector General of Police*, Ghana Supreme Court (2000), paras. 38, 48.

- 33.4. Any limitations imposed shall be clearly communicated.
34. The burden rests on the authorities throughout the process to justify and substantiate any restrictions imposed.
35. Organizers shall not be held liable for the public costs of assemblies.⁷⁶

⁷⁶ Public costs include the cost of policing, the costs of clean up, and the obligation to obtain public-liability insurance.

IV. Protection

36. States shall ensure the protection of all assemblies, public and private, from interference by third parties and non-state actors.⁷⁷
- 36.1. Authorities shall take particular care to ensure that marginalized and discriminated-against communities can assemble and voice their concerns free from harassment or intimidation.
- 36.2. Where third parties aim to harass or attack a peaceful assembly, the response of the authorities shall not be to ban or disperse the peaceful assembly, but rather to allow it to proceed in safety.
- 36.3. The authorities shall protect assemblies from individuals who have joined the assembly with the intention of provoking trouble, and remove such individuals should they become violent.
37. The authorities shall ensure the protection and rights of bystanders and other citizens.
38. The costs of security and safety measures shall be fully born by the state.
- 38.1. Financial charges shall not be levied on protest organizers and participants.
39. Persons have the right to assemble as counter-demonstrators, and thus simultaneous protests and counter-demonstrations shall not be banned. Rather, public safety authorities shall ensure that all demonstrations may proceed peacefully.⁷⁸
- 39.1. Authorities shall protect simultaneous counter-demonstrations as well as original demonstrations, where both are peaceful.
- 39.2. The authorities shall facilitate the ability of such assemblies to occur within sight and sound of one another.
- 39.3. At the same time, counter-demonstrations shall not be allowed to extinguish the right to freedom of assembly of the first party.⁷⁹

77 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 30, 33.

78 The aim is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other. *Barankevich v. Russia*, Eur. Ct. H.R. (2007), para. 30.

79 Meaning that such demonstrations shall not disrupt in a direct way the activities of other demonstrations.

V. Law Enforcement

General

40. Law-enforcement shall be built around a culture of human rights, and fundamentally aware that their purpose is to prioritize, protect and facilitate the exercise of human rights.

40.1. The state shall provide training for law-enforcement authorities on rights-respecting ways to deal with public assemblies. Such training shall ensure law-enforcement are skilled in techniques of crowd facilitation designed to minimize the risk of harm to all concerned, including techniques of conflict minimization such as negotiation and mediation, and that law-enforcement authorities recognize that their primary responsibility is to facilitate as far as possible the holding of peaceful assemblies. Refresher courses shall be provided as a matter of course, and updated as standards are developed.

40.2. The rights of law-enforcement authorities too shall be recognized.⁸⁰

41. Law-enforcement authorities shall communicate with assemblies and their organizers in a clear, effective and reasonable way.

41.1. The command structure of law-enforcement authorities shall include readily available points of contact whom members of an assembly can contact before, during or after an assembly.

41.2. The state shall ensure positive lines of communication between law-enforcement, emergency response teams and assembly organizers.

41.3. Law-enforcement members shall be trained in the sending of clear messages designed to inform crowd expectations and reduce the potential for conflict escalation.

41.4. Where warnings or directions are given, they shall be provided repeatedly with the use of sound-amplification equipment where necessary, and members of the assembly shall be given the time necessary to respond.

42. Members of law-enforcement shall be clearly identifiable, including through individual identification badges.

42.1. Photography and video recording of law-enforcement shall not be restricted.

43. An independent authority shall be appointed with the power to oversee and review the policies and practices of the law enforcement authorities.⁸¹

⁸⁰ Including through ensuring the access of law-enforcement personnel to mental health professionals.

⁸¹ Recourse to the courts should be possible to ensure the independence of this body should it be challenged.

- 43.1. Such oversight authority shall be provided with investigative powers and the ability to compel witnesses and to obtain documentation.
- 43.2. The oversight authority shall produce periodic reports.
44. In their public policing and all other activities, law-enforcement authorities shall ensure appropriate measures are adopted relative to vulnerable groups, including women and children.

Grounds for Dispersal

45. States shall only disperse public assemblies in rare and lawfully prescribed circumstances and as a last resort, and only where there is violence or an imminent threat of violence or of a violation of rights outweighing the violation that will be caused through the dispersal.⁸²
- 45.1. The state shall not employ anticipatory measures, including stopping and detaining individuals on route to an assembly, unless a clear and imminent danger of violence exists.⁸³
- 45.2. Law-enforcement authorities shall not disperse assemblies simply for technical violations of the law, without other serious cause. Assemblies shall not be dispersed simply due to failure to notify.⁸⁴
- 45.3. The response of the authorities shall always be proportionate and shall not be excessive.
- 45.4. The authorities shall aim to resolve a situation through negotiation or mediation where possible, ideally by civil servants trained in dealing with assemblies.
- 45.5. Regulations shall clearly specify the circumstances that warrant dispersal and who is entitled to issue dispersal orders.
- 45.6. Post-event debriefings addressing how to improve practices shall become standard practice. Event organizers shall be invited to participate where appropriate.
46. Law-enforcement authorities shall always be aware of and sensitive to the possibility that non-participants may be caught up in or close to an assembly.

82 Authorities shall bear in mind that often non-intervention is more likely to lead to a positive outcome than heavy-handed dispersal.

83 See, e.g., *Law Office of Ghazi Suleiman v. Sudan (II)*, Comm. No. 228/99 (2003), para. 56.

84 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), para. 29; *Inspector-General of Police v. All Nigeria Peoples Party and others*, Nigeria Court of Appeal (2007), paras. 16, 32-3.

- 46.1. Law-enforcement authorities shall not enforce indiscriminate crowd control lines, for example preventing any individuals from entering or leaving a certain area without considering whether individual circumstances require a different response.
47. Where violence or other unlawful acts are undertaken by isolated individuals or small groups, the law-enforcement authorities shall remove those individuals or groups rather than taking action against the assembly as a whole.⁸⁵ Violence by isolated individuals does not automatically render an entire protest unlawful or provide grounds for dispersal.
48. Law enforcement agencies should take every necessary measure to avoid escalation when dispersing assemblies. Dispersal shall never be a cause for escalation.
- 48.1. Dispersal decision shall be based on a thorough risk-assessment.
49. If dispersal is deemed necessary, organizers and participants shall be clearly and audibly informed prior to any intervention by law-enforcement personnel, and given adequate and reasonable time to disperse.
- 49.1. Only if participants fail to disperse within an adequate and reasonable time may law-enforcement authorities take further steps.
- 49.2. The authorities shall clearly communicate the location of clear and safe exits to dispersing parties.
- 49.3. Third parties (including journalists, photographers and monitors) may also be asked to disperse, but shall not be prevented from observing and recording the assembly and law-enforcement actions.
50. The authorities shall not seek to intimidate, harass or conduct reprisals against members of assemblies, and the right to privacy of assembly members must be respected.⁸⁶
- 50.1. The authorities shall not collect unnecessary information, such as biometric information, of assembly participants solely on the basis of their participation in assemblies.
- 50.2. States should adopt laws and policies stipulating that personal information may be collected only for lawful, legitimate purposes, with respect to the right to privacy.

*Use of Force*⁸⁷

85 See generally UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 50-67.

86 For further details, see Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, based on best practices and lessons learned, UN Doc A/31/66 (Feb. 4, 2016), paras. 73-8.

51. The use of force shall be governed by a clear legal framework.
52. All feasible steps shall be taken in planning, preparing and conducting an operation to avoid the use of force, and to minimize its harmful consequences where it is unavoidable.
53. The use of force may only be applied as a last resort and to the minimum extent necessary where strictly unavoidable.⁸⁸
 - 53.1. The use of firearms is only justified in the case of self-defense or defense of others against the imminent threat of death or serious injury, and only when less extreme means are insufficient to achieve these objectives.⁸⁹
 - 53.2. The intentional lethal use of force may only be made when strictly unavoidable in order to protect life.
54. The use of force shall always be strictly proportionate, and may only be used in defense of the rights of others.
 - 54.1. The authorities shall develop a range of means of response that enable the differentiated and proportional use of force.⁹⁰
 - 54.2. Security forces shall have protective and self-defense equipment, as well as less-lethal weapons for use in appropriate situations.⁹¹ Weapons and tactics should allow for a graduated response and the gradual de-escalation of tensions.
 - 54.3. Force shall never be used against peaceful protestors unable to depart.
 - 54.4. The use of firearms with less-lethal capacity in the context of protests, other than for the reasons listed in Article 50 above, shall be absolutely prohibited.

87 See Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, based on best practices and lessons learned, UN Doc A/31/66 (Feb. 4, 2016), para. 21.

88 See *id.* paras. 34-5. States shall ensure that their policing of assemblies is in harmony with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials.

89 Automatic firearms should never be used. Autonomous weapons system should be prohibited.

90 Decontamination procedures shall be set out whenever pepper spray or other chemical irritants are used.

Plastic or rubber bullets, water cannon and other forceful methods of crowd control shall be strictly regulated. Maximum caution shall be taken to minimise injury and effect on participants and bystanders. Discriminate and injurious weapons, such as rubber and plastic bullets, shall not be used as a dispersal mechanism and should only be deployed in specific circumstances to respond to violent incidents.

91 Such weapons shall be acquired with a view to restraining the application of more serious weapons, and should be subject to transparent and independent testing and approval aimed at assessing accuracy, reliability and ability to minimize harm, and used responsibly.

55. The use of force shall always trigger a review process.
56. Standards on the use of force shall be constantly reviewed to ensure compliance with international best practice and the greatest respect for rights.
57. Detention in the context of assemblies may only be used in the most pressing situations, where a crime has been committed or where necessary to prevent crimes being committed.
 - 57.1. Search, detention and arrest of participants may only be carried out in accordance with clear and prospective protocols in compliance with regional and international legal standards.⁹²
 - 57.2. Any individuals detained shall be detained in conditions complying with regional and international standards.⁹³

Accountability

58. The police shall be overseen and held accountable by an independent oversight office, both relative to their decisions to limit or disperse assemblies and relative to the manner in which they employ force.⁹⁴
 - 58.1. Independent oversight mechanisms shall review every large-scale confrontation or contentious operation.
 - 58.2. A means for submitting complaints concerning the police shall be established.
59. In any cases where excessive use of force is alleged, including all cases involving death or injuries, there shall be a full and effective investigation, and any and all responsible shall be held accountable, including through prosecution and punishment where necessary.⁹⁵
 - 59.1. If force was not necessary, or if disproportionate force was used, law-enforcement officers shall face civil and/or criminal liability as well as disciplinary actions.
 - 59.2. Law-enforcement personnel shall also be held accountable for failing to intervene where such intervention might have prevented the use of excessive force by their colleagues.

92 See, e.g., African Commission Guidelines on Conditions of Police Custody and Pretrial Detention in Africa; Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court.

93 See, e.g., African Commission Guidelines on Conditions of Police Custody and Pretrial Detention in Africa; Standard Minimum Rules for the Treatment of Prisoners.

94 Such as an ombudsman's office.

95 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 77-81.

60. The authorities shall not support the inserting of provocateurs aimed at creating disruptions into assemblies. Where they do, those responsible for backing those agents, as well as the agents themselves, shall be held accountable.

VI. Sanctions and Remedies

61. Sanctions shall be applied only in narrow and lawfully prescribed circumstances.
62. Sanctions shall only be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process.
63. All sanctions shall be strictly proportionate to the gravity of the misconduct in question.
64. Liability is always personal, such that neither the organizers nor fellow peaceful participants of a public assembly shall be subjected to sanctions of any kind on the basis of acts committed by others.⁹⁶
65. Excessive responsibilities or liabilities shall not be imposed on assembly organizers.
 - 65.1. Organizers shall not be subject to sanctions merely for failure to notify.⁹⁷
 - 65.2. Organizers should only be subject to monetary sanction where they fail to notify, where there is harm caused by the assembly, where that harm was reasonably foreseeable, and where they failed to take reasonable steps within their power to prevent the act or omission in question.
 - 65.3. The result of acts committed by individuals aimed at disrupting assemblies, together with clashes provoked by law-enforcement, should never invoke the liability of assembly organizers.
66. Where the right to peaceful assembly has been infringed, organizers and participants shall have a right to a remedy.⁹⁸
 - 66.1. The remedy shall include facilitation of future assemblies as necessary.
 - 66.2. The remedy shall include measures designed to address the concerns of the assembly that were harmed by unlawful prevention of the assembly.
 - 66.3. Organizers and members of the assembly have the right to compensation for actual and moral damages that have occurred.

96 See African Charter, Article 7(2); UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 29, 31; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc A/HRC/23/39 (14 April 2013), paras. 77-8; *International Pen and Others (on behalf of Saro-Wira) v. Nigeria*, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998), paras. 105-06.

The term personal shall be understood to include natural and legal persons.

97 See *Malawi African Association and others v. Mauritania*, Comm. Nos. 54/91, 61/91, 98/93, 164-196/97 & 210/98 (2000), paras. 108-11.

98 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Best practice), UN Doc A/HRC/20/27 (21 May 2012), paras. 77-81.

- 66.4. Where the authorities have pursued warrantless sanctions or dispersal, or have pursued sanctions or dispersal with the aim of harassing particular assemblies, those responsible shall be held liable for violating the right to freedom of assembly.
- 66.5. Where discriminatory conduct or physical attack or harassment or threats are carried out by private individuals in the course of an assembly, the authorities shall investigate and prosecute and punish where necessary.
- 66.6. The right to a remedy also requires other measures, such as satisfaction and guarantees of non-repetition, as and where appropriate.