The proper management of assemblies Recent normative development

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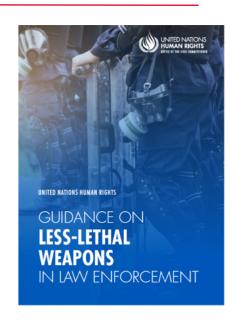


3 Key Reference Points



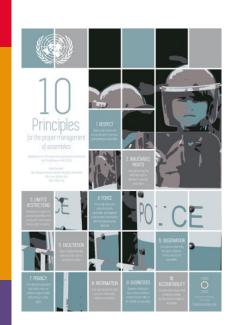
"Joint Report" on the proper management of assemblies by Special Rapporteurs Christof Heyns & Maina Kiai (A/HRC/31/66) (2016) "General Comment No.37" of the Human Rights Committee (relating to art.21 of the ICCPR, on peaceful assembly) (2020)





"UN Human Rights Guidance on LLWs" (adopted by OHCHR, published 2020)

The 10 Principles of the Joint Report



- 1. States shall respect and ensure all rights of persons participating in assemblies
- 2. Every person has the inalienable right to take part in peaceful assemblies
- 3. Any restrictions imposed on peaceful assemblies shall comply with international human rights standards
- 4. States shall facilitate the exercise of the right of peaceful assembly
- 5. Force shall not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law
- 6. Every person shall enjoy the right to observe, monitor and record assemblies
- 7. The collection of personal information in relation to an assembly must not interfere impermissibly with privacy or other rights
- 8. Every person has the right to access information related to assemblies
- 9. Business enterprises have a responsibility to respect human rights in the context of assemblies
- 10. The State and its organs shall be held accountable for their actions in relation to assemblies

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What is an assembly?



The right of peaceful assembly "protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected [...] whether they are stationary, such as pickets, or mobile, such as processions or marches." (para. 6)

Peacefulness



"The right of peaceful assembly may, by definition, not be exercised using violence. 'Violence' in [this] context [...] typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property. Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to 'violence'." (para. 15)

"There is not always a clear dividing line between assemblies that are peaceful and those that are not, but there is a presumption in favour of considering assemblies to be peaceful. Moreover, isolated acts of violence by some participants should not be attributed to others, to the organizers or to the assembly as such. Thus, some participants in an assembly may be covered by article 21, while others in the same assembly are not." (para. 17)

A particular note on monitors and "participants"



"The role of journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies is of particular importance for the full enjoyment of the right of peaceful assembly. [...]

"They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. [...]

"Even if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor.

"It is a good practice for independent national human rights institutions and non-governmental organizations to monitor assemblies." (para. 30)

The role of law enforcement related to an assembly



Authorities should "work towards establishing channels for communication and dialogue between the various parties involved in assemblies, before and during the assembly, aimed at promoting preparedness, de-escalating tensions and resolving disputes" (para. 75)

"Where the presence of law enforcement officials is required, the policing of an assembly should be planned and conducted with the objective of enabling the assembly to take place as intended" (para. 76)

"Law enforcement officials should seek to de-escalate situations that might result in violence. They are obliged to exhaust non-violent means and to give prior warning if it becomes absolutely necessary to use force, unless doing either would be manifestly ineffective." (para.78)

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The role of law enforcement (cont.)



"All law enforcement officials responsible for policing assemblies must be suitably equipped, including where needed with appropriate and fit-for-purpose less-lethal weapons and protective equipment. [...] Law enforcement agencies must be alert to the potentially discriminatory impacts of certain policing tactics, including in the context of new technologies, and must address them." (para. 81)

"With a view to preventing violations, States should consistently promote a culture of accountability for law enforcement officials during assemblies. To enhance effective accountability, uniformed law enforcement officials should always display an easily recognizable form of identification during assemblies" (para.89)

"Firearms are not an appropriate tool for the policing of assemblies. They must never be used simply to disperse an assembly." (para.88)

The question of dispersal



"Only in exceptional cases may an assembly be dispersed. Dispersal may be resorted to if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures, such as targeted arrests.

"In all cases, the law enforcement rules on use of force must be strictly followed. Conditions for ordering the dispersal of an assembly should be set out in domestic law, and only a duly authorized official may order the dispersal of a peaceful assembly.

"An assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is "serious and sustained"." (para.85)

Procurement / Testing / Training of LLWs



- Legal Review, Testing & Procurement (§4.2)
 - A legal review must be conducted prior to procurement, and should include independent testing that takes into account both the required and the potential capabilities and effects of the weapon
 - Weapons whose designated, expected or intended use does not comply with law enforcement rules, or which pose undue risk of loss of life or serious injury to anyone, shall not be authorised for procurement, deployment or use.
- "States and law enforcement agencies shall monitor the use and effects of all the less-lethal weapons and related equipment they procure, deploy and use for law enforcement purposes." (§4.3.1)
- "Law enforcement officials shall receive appropriate initial and refresher training in the use and effects of any less-lethal weapons with which they have been equipped or deployed. The training should be to a high standard, and trainees should be authorized to carry and use only those weapons in which they have been trained successfully. Command and supervisory officials should also receive ongoing training on their obligations, arising from their command functions, in areas relating to the use of force" (§4.5.2)

Kinetic impact projectiles (§7.5) ("rubber bullets")



- "Kinetic impact projectiles should generally be used only in direct fire with the aim of striking the lower abdomen or legs of a violent individual and only with a view to addressing an imminent threat of injury to either a law enforcement official or a member of the public." (§7.5.2)
- "Certain projectiles are highly inaccurate. To meet international standards, impact projectiles should be capable of striking an individual to within a 10-centimetre diameter of the targeted point when fired from the designated range. Skip-firing projectiles off the ground causes an unacceptable risk of serious injury due to their inaccuracy." (§7.5.4)
- Kinetic impact projectiles should not be fired in automatic mode (§7.5.5) and multiple projectiles fired at the same time are inaccurate and, in general, their use cannot comply with the principles of necessity and proportionality. (§7.5.6) Metal pellets, such as those fired from shotguns, should never be used (§7.5.6) and rubber-coated metal bullets are particularly dangerous and should not be used (§7.5.8).
- "Kinetic impact projectiles should not be targeted at the head, face or neck." (§7.5.8)

Monitoring (§4.3)



- "States and law enforcement agencies shall monitor the use and effects of all the less-lethal weapons and related equipment they procure, deploy and use for law enforcement purposes." (§4.3.1)
- "Monitoring should include contextual information about the circumstances of use. (...) The results of monitoring should be made public in accordance with the transparency requirements set out below. This should include publicly available national statistics on deaths and serious injuries relating to different categories of less-lethal weapons." (§4.3.2)
- "States and law enforcement agencies should cooperate with the monitoring of the use and effects of all less-lethal weapons and related equipment by external monitoring bodies, such as NHRIs and independent police complaint mechanisms, as well as international organizations and civil society organizations. The results of such monitoring should be considered during training and when updating internal polices or guidance." (§4.3.5)

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Concluding thoughts on monitoring and accountability

- All stages of the process of preparing for and responding to an assembly need to be capable of review by both internal and external accountability mechanisms.
- The same bodies must be able to review procurement procedures and testing data, SOPs, training manuals, and other material relevant to strategic policy-making by the police to prepare for assemblies.
- Relevant information needs to be shared, and access given so that oversight mechanisms can assess whether, at all times, authorities are fulfilling their positive duties to facilitate peaceful assemblies.
- Mechanisms need to be empowered (and resourced) to be capable of investigating potential violations arising from assemblies on their own motion (though obviously also need to be accessible for public complaints)