

**INITIAL COMMENTS IN VIEW OF THE HUMAN RIGHTS COMMITTEE’S DECISION TO ELABORATE A GENERAL COMMENT ON ARTICLE 21 (PEACEFUL ASSEMBLY)**

**Submitted by the Open Society Justice Initiative**

**and the Committee on the Administration of Justice**

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**INTRODUCTION**

The Open Society Justice Initiative (Justice Initiative) and the Committee on the Administration of Justice (CAJ) welcome the opportunity to provide the following initial comments to the Human Rights Committee (the Committee) in view of the Committee’s elaboration of a new General Comment on Article 21 of the International Covenant on Civil and Political Rights (ICCPR), on the right to freedom of peaceful assembly.

The Justice Initiative, an operational program of the Open Society Foundations, uses litigation and other forms of legal advocacy to empower people, defend the rule of law, and advance human rights around the world. We pursue accountability for international crimes, counter-terrorism abuses and grand corruption, and promote equality, criminal justice reform, economic justice, access to information and a vibrant civic space. Our staff is based in Abuja, Berlin, Brussels, The Hague, London, Mexico City, New York, Paris, Santo Domingo, and Washington, D.C. The Justice Initiative has submitted information and research to the Committee on numerous occasions including concerning the General Comments on Article 19 (right to freedom of opinion and expression) and Article 6 (right to life); several cases pursuant to the First Optional Protocol; and comments on State reports, most recently, that of Hungary.

CAJ is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981, campaigns on a broad range of human rights issues and is a member of the International Federation of Human Rights. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its international human rights obligations. CAJ has been awarded several international human rights prizes, including the Reebok Human Rights Award and, in 1998, the Council of Europe Human Rights Prize. CAJ has a long track record of engagement with the Council of Europe and United Nations human rights machinery and makes regular submissions to treaty bodies.

Part I of this submission contains 20 recommendations of points to include in the General Comment in the following three areas:

1. The relationship between Article 21 and the right of access to information guaranteed by Article 19;
2. Use of undercover agents and other forms of surveillance in relation to assemblies; and
3. Handling of simultaneous and counter-demonstrations.

In Part II of this submission, we set forth support for each of the 20 recommendations in international, regional, and comparative hard and soft law, as well as best practices and policy considerations.

1. **RECOMMENDATIONS FOR THE GENERAL COMMENT**

We recommend that the Committee include the following 20 points in the General Comment.

1. **RELATIONSHIP BETWEEN ARTICLE 21 AND THE RIGHT OF ACCESS TO INFORMATION GUARANTEED BY ARTICLE 19**
   * + 1. The right to peaceful assembly is closely linked to the right of access to information held by public authorities guaranteed by Article 19 ICCPR. Access to information is necessary in order to enable individuals to exercise their rights in the context of assemblies and to ensure accountability.
       2. Public authorities should proactively make available information that individuals and watchdogs need in order to be able to: (a) exercise democratic oversight of the policing of assemblies and promote accountability; (b) safeguard rights to freedom of assembly and expression; and (c) be aware of conduct that could result in penalties.
       3. Public authorities are obliged to take concrete steps to ensure easy, prompt, effective, and practical access to such information; and establish procedures for the timely processing of requests for information according to clear rules.
       4. The right of access to information from public authorities, including police forces, should be restricted only when there is a compelling reason to withhold the information – one that is set forth in law, and that outweighs the public interest in having access to the information. Such restrictions should not be used to conceal human rights violations or to advance any other improper purpose.
       5. Public authorities should devote special attention to collecting and making available information needed to protect against arbitrary or discriminatory treatment in the handling of assemblies.
       6. Public authorities, including the police should document and communicate in a timely manner to the organizers of an assembly, and should supply upon request and free of charge to other members of the public, any decisions about the assembly, especially those that could affect an individual’s rights or freedoms, taken prior to, during, or after an assembly.
       7. In advance of an assembly, and during an assembly to the extent possible, the authorities should communi­cate a clear rationale for suggesting or imposing restrictions and the organ­izers should be offered reasonable alternatives when a restriction imposes a significant burden on the assembly.
       8. On the day of an assembly, law enforcement officers should make themselves identifiable, take steps necessary to identify contact points, and communicate clearly and in a non-threatening manner.
2. **USE OF UNDERCOVER AGENTS AND OTHER FORMS OF SURVEILLANCE**
   * + 1. The collection of accurate information by law enforcement may be useful to the proper management of assemblies. However, given that the use of undercover agents and other forms of surveillance interfere with the right to privacy, their deployment must not be unlawful or arbitrary.
       2. States should ensure that all types of interference with privacy, including infiltration and other forms of surveillance, are governed by appropriate legislation that is in full conformity with the ICCPR, including with the principles of legality, proportionality and necessity. In particular, such laws should be “publicly accessible” and “sufficiently precise,” that is, they should specify in detail the precise circumstances in which any such interference may be permitted, the procedures for authorization, the categories of persons who may be placed under surveillance, the limit on the duration of surveillance, and procedures for the use and storage of data collected.  Such laws should also require that any surveillance is tailored to promote a specific and legitimate aim; is permissible only if the value of the information sought outweighs the interference with rights to privacy and freedom of peaceful assembly, association and expression of all those affected; and is the least intrusive means possible.
       3. States should ensure that their practice conforms to the laws. In particular, they should ensure that the categories of persons likely to be placed under surveillance are set forth in detail.
       4. States should implement “sufficient judicial safeguards” to protect against arbitrariness.
       5. States should ensure the transparency of the powers of, and safeguards on, the bodies that may order surveillance, including specialized courts, by requiring them to make public their policy guidelines and decisions, subject only to redactions necessary to protect legitimate and specific national security interests and the privacy interests of individuals affected by those decisions.
       6. It is not compatible with the ICCPR to engage in infiltration or other forms of surveillance of groups engaged in entirely lawful expressive activity. Infiltration and other forms of surveillance are consistent with the ICCPR only if reasonable grounds exist to suspect that a serious criminal act is likely to be committed.
       7. Where a decision is made to engage in infiltration or surveillance, a clear and transparent written record of the decision should be made and maintained, and the identity of the officer who made the decision should be available to any entity that reviews the decision.
       8. Infiltration and other forms of surveillance should never involve the facilitation, tolerance or direction of activities which, if perpetrated by State agents, would constitute human rights violations.
3. **FACILITATION OF SIMULTANEOUS AND COUNTER-DEMONSTRATIONS** 
   * + 1. When organizers wish to conduct peaceful assemblies at the same time and place, the State is obliged to protect and facilitate both or all, to the extent possible. The obligation to accommodate assemblies within a reasonable vicinity (“sight and sound”) of each other is all the stronger where one is a counter-demonstration to the other.
       2. Peaceful assemblies, including ones involving protected expression that may “offend, shock or disturb,” may not be prohibited or moved to locations deemed undesirable by the organizers, on the pretext that an adverse public reaction threatening public order would likely be provoked.
       3. Where two or more assemblies cannot be accommodated in the same location at the same time, clearly-stated, neutral criteria must be applied in determining which assembly is to be authorized to use the contested location. Priority may not be given to government-supported, pro-government, or regularly-held assemblies. Particular effort should be taken to ensure equal and effective protection of the rights of groups or individuals who have historically experienced discrimination.
       4. While incitement to violence or hatred provides one of the limited circumstances in which public authorities may be obliged to restrict an assembly, any restriction must comply with the principles of legality, necessity and proportionality, and be the least intrusive means possible. Dispersal of an assembly is justified only in extreme cases, where violence appears unpreventable by other means. Authorities should take care not to stifle legitimate protest through broad or vague restrictions imposed under the pretext of combatting hate expression.
4. **SOURCES FOR, AND JUSTIFICATIONS OF, OUR RECOMMENDATIONS**

In this Part, we set forth each of our 20 recommendations in bold, followed by support for them in international, regional, and comparative hard and soft law, as well as best practices and policy considerations.

1. **RELATIONSHIP BETWEEN ARTICLE 21 AND THE RIGHT OF ACCESS TO INFORMATION GUARANTEED BY ARTICLE 19**

In order to elaborate the requirements of access to information in the context of State responsibility to respect, protect and fulfil the right to peaceful assembly, the Justice Initiative and CAJ – in consultation with civil society groups, police officials, and other experts around the world – drafted a set of Principles and Guidelines on Protest [[1]](#footnote-1)and the Right to Information (“Principles on Protest and RTI”), that are in the process of being considered for endorsement by various inter-governmental and expert bodies.[[2]](#footnote-2) Several of these principles, as well as other sources, are referenced in the following sub-sections:

* access to laws, policies, and information necessary to safeguard rights to peaceful assembly;
* transparency and timely communication of decisions concerning an assembly.

***Access to laws, policies, and information necessary to safeguard the right to peaceful assembly***

* + - 1. **The right to peaceful assembly is closely linked to the right of access to information held by public authorities guaranteed by Article 19 ICCPR. Access to information is necessary in order to enable individuals to exercise their rights in the context of assemblies and to ensure accountability.**
      2. **Public authorities should proactively make available information that individuals and watchdogs need in order to be able to: (a) exercise democratic oversight of the policing of assemblies and promote accountability; (b) safeguard rights to freedom of assembly and expression; and (c) be aware of conduct that could result in penalties.[[3]](#footnote-3)**
      3. **Public authorities are obliged to take concrete steps to ensure easy, prompt, effective, and practical access to such information; and establish procedures for the timely processing of requests for information according to clear rules.**

The categories of information that should be proactively made available and disclosed upon request include the laws, regulations, decrees, judicial orders, policy documents, standard operating procedures, training manuals, disciplinary codes and other documents that bind or guide law enforcement and other decision-makers concerning matters that may arise in relation to assemblies; the types of equipment used in managing assemblies; information about bodies that manage assemblies, including special military units and private security companies; and the procedures for requesting information. These documents should, at a minimum, address circumstances in which dispersal of assemblies or arrest of protesters are permissible; the permissible uses of force in various circumstances; the handling of counter-protests; the right of the media and other public watchdogs to observe and record assemblies; the use of surveillance and undercover agents; and any duties imposed on protesters, including notification requirements.

Public access to information about assemblies is important for at least three reasons. First, public watchdogs – including groups that engage in protests, police reformers, journalists, and legislators – need access to this information in order to be assured that the police are prepared to handle protests; assess whether the laws, policies and SOPs adequately respect human rights; challenge the SOPs if they think they encroach on rights; and monitor police conduct according to the rules the police set for themselves.[[4]](#footnote-4)

Second, the police need information in order to be prepared to manage assemblies so as to ensure that protesters are able to exercise their rights to freedom of assembly and expression while minimizing negative impacts on the mobility and interests of others. Information should be made public to improve its accuracy. As noted by two UN Special Rapporteurs in their practical recommendations for the proper management of assemblies, submitted to the Human Rights Council in February 2016 (hereafter referenced as “two UN Rapporteurs”), “States should plan properly for assemblies, which requires the collection and analysis of information” and “[t]ransparent decision-making is central to the process of planning and facilitating of assemblies and in ensuring that any action taken by law enforcement is proportionate and necessary... .”[[5]](#footnote-5)

Third, members of the public need access to the information so that they can make informed decisions as to whether or not, and how, to comply with the law and policies. Access to legislation and policies is all the more important where needed to ensure that the exercise of a fundamental human right, such as the right to free assembly, is not chilled.

Support for the principle that public authorities are obliged to make a range of categories of information proactively available concerning their handling of protests is supplied by several international and national laws, instruments, and standards.

Most importantly, the Committee affirmed in General Comment No. 34 that Article 19 ICCPR “embraces a right of access to information held by public bodies” and that public bodies include “all public or governmental authorities at whatever level,” as well as other entities “when such entities are carrying out public functions”or their actions “would impair” the right.[[6]](#footnote-6)  Moreover, “[t]o give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest” and “should make every effort to ensure easy, prompt, effective and practical access to such information.”[[7]](#footnote-7) Laws of more than 120 countries now entrench the right of access to information in national law, guaranteeing the right, at least on paper, to nearly 90% of the world’s 7.7 billion total population.[[8]](#footnote-8)

The right to protest-related information is further bolstered by the right of individuals to information concerning themselves that may affect their rights, pursuant to the right to privacy under Article 17 ICCPR.[[9]](#footnote-9)

Protesters who suffer grave human rights violations, for instance as the result of excessive use of force, also have a right to truth (namely, the right of human rights victims, their families and society at large to know about grave human rights violations, including why committed and by whom, and to be able to seek and obtain appropriate remedies).[[10]](#footnote-10) The Human Rights Council has emphasized that the public and individuals are entitled to know the truth regarding such violations “to the fullest extent practicable, in particular, the identity of the perpetrators, the causes and facts of such violations, and the circumstances under which they occurred.”[[11]](#footnote-11)

Decisions concerning the management of protests may affect the civil and political rights of protestors, including to freedom of expression, assembly, association, and participation in public affairs. Given the right to a fair hearing under Article 14 ICCPR for the determination of civil and political rights,[[12]](#footnote-12) protesters also need information to defend their rights in such proceedings.

The two UN Special Rapporteurs affirm the importance of the right of access to information in several sections of their report. Recommendation H begins with the assertion that the “ability to access information is essential to enabling individuals to exercise their rights in the context of assemblies and to ensuring accountability.”[[13]](#footnote-13) The section lists several categories of information that States should proactively disseminate relating to the management of assemblies.[[14]](#footnote-14) Recommendation D addresses the duty of States to facilitate the exercise of the right to peaceful assembly, including to collect, analyze and make available information in advance of a planned assembly.[[15]](#footnote-15) Recommendation J on State accountability notes that the right to a remedy includes “access to relevant information concerning violations and reparation mechanisms.”[[16]](#footnote-16)

The Parliamentary Assembly of the Council of Europe (PACE), in 2016, called on the Council’s member States to “ensure that information concerning legislation and regulations guiding the police’s actions regarding peaceful protests is accessible to the public.”[[17]](#footnote-17)

The Principles on the Protection of Human Rights in Protests, developed by Article 19, similarly highlight the obligations of States to “ensure that all decision-making processes relating to protests are transparent,” and to “enable the free flow of information relating to protests including through all types of media, so that everybody can freely impart and receive information about protests before, during and after them.”[[18]](#footnote-18)

The Inter-American Model Law on Access to Information, welcomed by the OAS General Assembly, and the Model Law on Access to Information for Africa, endorsed by the African Commission on Human and Peoples Rights, both set out several *key classes of information* that should be proactively disclosed by public authorities, including policy documents, rules, guidelines, manuals and other classes of information directly relevant to human rights in the context of protest.[[19]](#footnote-19)

The Council of Europe’s European Code of Police Ethics similarly provides that “Legislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public.”[[20]](#footnote-20)

* + - 1. **The right of access to information from public authorities, including police forces, should be restricted only when there is a compelling reason to withhold the information – one that is set forth in law, and that outweighs the public interest in having access to the information.**[[21]](#footnote-21) **Such restrictions must not put the realization of the right itself in jeopardy, [[22]](#footnote-22) and restrictions should not be used to conceal human rights violations or to advance any other improper purpose.[[23]](#footnote-23)**

Public authorities, undeniably, are entitled to withhold *some* types of information – such as rules of engagement – about the management of assemblies where necessary to prevent violent crime, advance the interests of justice, or protect privacy interests.[[24]](#footnote-24)

In practice, police forces have been able to reconcile the obligations of transparency and effective policing, recognizing the importance to both effective and accountable policing of publishing police codes, legal and ethical guidelines, and other matters of public interest. For instance, in Northern Ireland, an Independent Commission on Policing established as part of the peace settlement, recommended:

Police codes of practice should be publicly available; this does not mean, for example, that all details of police operational techniques should be released – they clearly should not – but the principles, and legal and ethical guidelines governing all aspects of police work should be, including such covert aspects as surveillance and the handling of informants ... The presumption should be that everything should be available for public scrutiny unless it is in the public interest – not the police interest – to hold it back. It follows that there should be readily available and clearly drafted notes on matters which the public are likely to be interested to see. .... Transparency is not a discrete issue but part and parcel of a more accountable, more community-based and more rights-based approach to policing.[[25]](#footnote-25)

* + - 1. **Public authorities should devote special attention to collecting and making available information needed to protect against arbitrary or discriminatory treatment in the handling of assemblies.**

As stated by the two UN Special Rapporteurs:

Particular effort should be made to ensure equal and effective protection of the rights of groups or individuals who have historically experienced discrimination…. This duty may require that authorities take additional measures to protect and facilitate the exercise of the right to freedom of assembly by such groups.[[26]](#footnote-26)

In order to ensure compliance with non-discrimination requirements, including that due attention should be paid to the situation of groups at risk of marginalization or vulnerability, an increasing number of IGO bodies and bureaux recommend that relevant information be disaggregated by gender, disability, age, religion, ethnicity, income segment and any other ground considered relevant, based on a contextual, country-level appreciation of groups at risk of marginalization.[[27]](#footnote-27)

For instance, the UN Committee on the Elimination of Racial Discrimination (CERD) has recommended steps to better gauge the existence and extent of racial discrimination within the justice system, including statistical indicators that would expose excessive use of force or imposition of harsher sentences against persons belonging to protected groups.[[28]](#footnote-28)

The Inter-American Commission on Human Rights (IACHR) has called on authorities to “consistently gather[…] official statistics” disaggregated by race, ethnicity, gender, sexual orientation, language and other protected grounds concerning the victims of the use of force by law enforcement personnel, including in the context of public demonstrations.[[29]](#footnote-29)

The European Commission against Racism and Intolerance of the Council of Europe issued a recommendation that member states should “monitor police activities in order to identify racial profiling practices, including by collecting data broken down by grounds such as national or ethnic origin, language, religion and nationality in respect of relevant police activities.”[[30]](#footnote-30)

***Transparency and timely communication of decisions concerning an assembly***

* + - 1. **Public authorities, including the police should document and communicate in a timely manner to the organizers of an assembly, and should supply upon request and free of charge to other members of the public, any decisions about the assembly, especially those that could affect an individual’s rights or freedoms, taken prior to, during, or after an assembly.**
      2. **In advance of an assembly, and during an assembly to the extent possible, the authorities should communi­cate a clear rationale for suggesting or imposing restrictions and the organ­izers should be offered reasonable alternatives when a restriction imposes a significant burden on the assembly.**
      3. **On the day of a protest, law enforcement officers should make themselves identifiable and should take steps necessary to identify contact points, and communicate clearly and in a non-threatening manner.**

Accurate information on how and when decisions were taken and the basis for them is the only way to ensure that decisions were made in a human-rights compliant manner. For this reason, the two UN Special Rapporteurs have recommended, among other measures, that:

* “[Any] proposed restrictions should be put in writing, justified and communicated to the organizers, including the justification for the restriction, allowing an opportunity for the organizers to make submissions and to respond to any proposed restriction.”[[31]](#footnote-31)
* “A clear and transparent command structure must be established to minimize the risk of violence or the use of force, and to ensure responsibility for unlawful acts or omissions by officers. [[32]](#footnote-32)
* “Proper record keeping of decisions made by command officers at all levels is also required.”[[33]](#footnote-33)
* “Law enforcement officials must be clearly and individually identifiable, for example by displaying a nameplate or number.”[[34]](#footnote-34)

The OSCE Handbook on Policing Assemblies similarly recommends:

* Record Keeping: Information on the planning process, roles and responsi­bilities, and the strategic intentions that shape decision-making processes and the outcome of those decisions, needs to be available for examination, especially for those decisions that impact an individual’s rights and freedoms.[[35]](#footnote-35)
* Imposing Restrictions**:** If a decision is made to impose restrictions on an assembly, either by the relevant authority in advance of the event or by the police during its course, then any decision to do so must be informed by the human rights principles outlined above. The police should always communi­cate a clear rationale for suggesting or imposing restrictions and the organ­izers should always be offered reasonable alternatives when a restriction imposes a significant burden on the assembly.[[36]](#footnote-36)
  + 1. **USE OF UNDERCOVER AGENTS AND OTHER FORMS OF SURVEILLANCE**

The Justice Initiative and CAJ are pleased that the Committee’s Rapporteur on this General Comment has indicated in the Background paper his interest to address the compatibility with the ICCPR of undercover policing. We note that undercover policing includes the use of law enforcement officers and private security contractors to infiltrate groups of persons engaged in peaceful assembly; and the recruitment and use of informants within target groups. It also includes on-line (or digital) and other forms of surveillance. Such practices impact the right to privacy protected by Article 17 and can also interfere with the right to peaceful assembly protected by Article 21 through a variety of means including by:

* directly and intentionally restricting peaceful assembly;
* creating a chilling effect on rights holders;
* targeting particular individuals for criminalization for acts protected by the ICCPR;
* using *agents provocateurs*, in the planning or at the actual site of demonstrations, luring protestors into acts that otherwise would not have occurred (including the incitement or use of violence, to justify the suppression of the protest, or the criminalization of its participants).

1. **The collection of accurate information by law enforcement may be useful to the proper management of assemblies. However, given that the use of undercover agents and other forms of surveillance interfere with the right to privacy, their deployment must not be unlawful or arbitrary.**

Article 17 ICCPR provides that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence….”

As noted by Committee Chairperson Yuval Shany in a recent article, the Committee elaborated the meaning of the term “arbitrariness” in General Comment No. 35 (2014) on arbitrary detention:

The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. [[37]](#footnote-37)

1. **States should ensure that all types of interference with privacy, including infiltration and other forms of surveillance, are governed by appropriate legislation that is in full conformity with the ICCPR, including with the principles of legality, proportionality and necessity. In particular, such laws should be publicly accessible and sufficiently precise, that is, they should specify in detail the precise circumstances in which any such interference may be permitted, the procedures for authorization, the categories of persons who may be placed under surveillance, the limit on the duration of surveillance, and procedures for the use and storage of data collected.  Such laws should also require that any surveillance is tailored to promote a specific and legitimate aim; should be permissible only if the value of the information sought outweighs the interference with rights to privacy and freedom of peaceful assembly, association and expression of all those affected; and should be the least intrusive means possible.**

Prof. Shany, in his article, noted the many recommendations the Committee has made in its concluding observations to guard against arbitrariness and unlawfulness in the use of on-line surveillance. These principles are equally applicable to other forms of surveillance, including covert policing. They include that States should ensure that all types of interference with privacy, including online surveillance, are governed by appropriate legislation that is in full conformity with the ICCPR, including with the principles of legality, proportionality and necessity.[[38]](#footnote-38)

In particular, such laws should be “publicly accessible” and “sufficiently precise,” that is, they should “specify in detail the precise circumstances in which any such interference may be permitted, the procedures for authorization, the categories of persons who may be placed under surveillance, the limit on the duration of surveillance, [and] procedures for the use and storage of data collected.”[[39]](#footnote-39)

Such laws should also require that any surveillance is tailored to promote a “specific and legitimate aim.”[[40]](#footnote-40)

As stated by the two UN Special Rapporteurs, authorities should “consider whether the proposed undercover activity is the only way to secure the required information, and whether the value of the information justifies the intrusion. This should take into account the impact on the rights of all those affected, not only the targets.” The Rapporteurs also urge that “Collection of information must not unlawfully or arbitrarily interfere with privacy rights, and legislation in the area should incorporate “legality, necessity and proportionality tests,” and that “authorities should consider whether the proposed undercover activity is the only way to secure the required information and whether the value of the information justifies the intrusion … [and] … should take into account the impact on the rights of all those affected, not only the targets.”[[41]](#footnote-41)

1. **States should ensure that their practice conforms to the laws.[[42]](#footnote-42) In particular, they should ensure that the categories of persons likely to be placed under surveillance are set forth in detail.**

The Human Rights Committee has recommended that States should “ensure that the collection and use of data on communications take place on the basis of specific and legitimate objectives and that the exact circumstances in which such interference may be authorized and the categories of persons likely to be placed under surveillance are set out in detail”.[[43]](#footnote-43)

1. **States should implement “sufficient judicial safeguards” to protect against arbitrariness.**[[44]](#footnote-44)
2. **States should increase the transparency of the powers of, and safeguards on, the bodies that may order surveillance, including specialized courts, by considering to make public their policy guidelines and decisions, in full or in part, subject to national security considerations and the privacy interests of individuals concerned by those decisions.”[[45]](#footnote-45)**

1. **Infiltration and surveillance are consistent with the ICCPR only if** “**reasonable grounds exist to suspect that a serious criminal act is likely to be committed.”[[46]](#footnote-46)** **It is not compatible with the ICCPR to engage in surveillance of, or infiltrate informants, undercover officers or private agents into, groups engaged in entirely lawful expressive activity**.

Such practices do not meet the necessity test in a democratic society and do not advance any of the legitimate aims permitted under Article 21. For similar reasons, such practices also unjustifiably interfere with the right to privacy under Article 17.

In relation to the use of *agent provocateurs*, there are examples of codes and guidelines preventing such practices;[[47]](#footnote-47) as well as regional case law in relation to entrapment and the right to a fair trial protected under Article 14.[[48]](#footnote-48)

In several jurisdictions, police departments and/or municipal governments have established that infiltration of groups engaged in legitimate expression is prohibited, unless there exists reasonable suspicion that a crime has occurred, is occurring or is about to occur, and additional information from a reliable inside source is necessary to prevent serious injury to the public or to assure identification and apprehension of the persons engaging in criminal conduct.[[49]](#footnote-49)

1. **Where a decision is made to engage in infiltration or surveillance, a clear and transparent written record of the decision should be made and maintained, and the identity of the officer who made the decision should be available to any entity that reviews the decision**.

This principle is supported by the sources cited in Part I of this submission, as well as by the OSCE Handbook on Policing Assemblies.[[50]](#footnote-50)

1. **Infiltration and other forms of surveillance** **should never involve the facilitation, tolerance or direction of activities which, if perpetrated by State agents, would constitute human rights violations, including acts of violence, entrapment, or disproportionate interference in privacy rights, such as the forming of intimate sexual relationships with the subjects of surveillance.**

The Committee has made clear that assembly organizers and participants should not face intimidation, including from the police.[[51]](#footnote-51)

**C. Facilitation of Simultaneous and Counter-Demonstrations**

1. **When organizers wish to conduct peaceful assemblies at the same time and place, the State is obliged to protect and facilitate both or all, to the extent possible. The obligation to accommodate assemblies within a reasonable vicinity (“sight and sound”) of each other is all the stronger where one is a counter-demonstration to the other.**

The OSCE/ODIHR and Venice Commission Guidelines on Peaceful Assembly provide that:

The right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate. Indeed, demonstrators should respect the rights of others to demonstrate as well…. Emphasis should be placed on the State’s duty to protect and facilitate each event where counter-demonstrations are organized or occur, and the State should make available adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within “sight and sound” of one another.[[52]](#footnote-52)

The two UN Special Rapporteurs affirm that:

The State’s obligation to facilitate and protect assemblies includes simultaneous assemblies and counter-protests, in which one or more assemblies aim to express discontent with the message of other assemblies. Assemblies, including spontaneous assemblies and counter-protests, should, as far as possible, be facilitated to take place within sight and sound of their target . . . .”[[53]](#footnote-53)

Of course. when “a counter-demonstration has been organized with the intention of interfering with the rights of others to lawfully assemble,” [[54]](#footnote-54) Article 5 ICCPR is engaged and the State may prevent, or in other ways limit, the counter-demonstration.

1. **Peaceful assemblies, including ones involving protected expression that may “shock, offend or disturb,”[[55]](#footnote-55) may not be prohibited or moved to locations deemed undesirable by the organizers, on the pretext that an adverse public reaction threatening public order would likely be provoked.**

In the case of *Nikolai Alekseev vs Russian Federation,* the Committee found a violation of Article 21 where the State denied an application for a picket concerning gay rights in front of the Iranian embassy to call for a ban on the execution of homosexuals and minors in Iran on the ground that the event would trigger “a negative reaction in society”.[[56]](#footnote-56) The Committee noted that the picket was denied on the basis of its subject matter and that “an unspecified and general risk of a violent counter-demonstration or the mere possibility that the authorities would be unable to prevent or neutralize such violence is not sufficient to ban a demonstration.”[[57]](#footnote-57)

Such considerations are linked to duties to take positive steps to protect protestors, including from violence or other attacks from State and non-State actors who may oppose the protest. In many countries, participants in certain protests and marches – such as those concerning LGBTI, women’s or indigenous rights – may require special protection.[[58]](#footnote-58)

1. **Where two assemblies cannot be accommodated in the same location at the same time, clearly-stated, neutral criteria must be applied in determining which assembly is to be authorized to use the contested location. Priority may not be given to government-supported, pro-government, or regularly-held assemblies. Particular effort should be taken to ensure “equal and effective protection of the rights of groups or individuals who have historically experienced discrimination.”**[[59]](#footnote-59)

A key principle of decision-making in relation to assigning locations for simultaneous demonstrations should be that of non-discrimination on protected grounds.[[60]](#footnote-60)

An example of a violation of this norm is provided by an amendment to Poland’s Law on Assemblies, which entered into force in April 2017.[[61]](#footnote-61) The amendment provides for “cyclical demonstrations” organized by the same entity and at the same location to take priority over other assemblies at the same time and location, with the effect of preventing counter-demonstrations. The legislative change occurred against the backdrop of recurring pro-government rallies and marches to the Presidential Palace on the same day each month to commemorate the 2010 Smoleńsk air crash. The legislation has been used to ban counter demonstrations to the rallies. Those who have nevertheless sought to counter-protest have been prosecuted for minor offences relating to interference with the rally, or criminal offences such as malicious interference with a religious act.[[62]](#footnote-62)

Northern Ireland provides an example of a jurisdiction where there has been reform in relation to the regulation of parades and counter-protests. While legislation previously gave more favorable treatment to traditional or official parades along customary routes, reforms introduced in the context of the peace process led to the establishment of an independent Parades Commission, which is obliged to apply specific criteria.[[63]](#footnote-63)

The State is duty-bound to ensure the prevention of incitement to hatred on national, racial or religious grounds, and to combat dissemination of ideas or theories based on racial superiority or hatred.[[64]](#footnote-64) CERD has recommended that “the criminalization of forms of racist expression should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, *inter alia*, the nature and extent of the impact on targeted persons and groups.” [[65]](#footnote-65) This implies lesser sanctions should be imposed in other cases, taking into account the context and the likelihood of violence or harm to individuals. This may include restrictions on assemblies or counter-protests.

1. **While incitement to violence or hatred provides one of the limited circumstances in which public authorities may be obliged to restrict an assembly, any restriction must comply with the principles of legality, necessity and proportionality, and be the least intrusive means possible. Dispersal of an assembly is justified only in extreme cases, such as where violence appears unpreventable by other means, is including.[[66]](#footnote-66) Authorities should take care not to stifle legitimate protest by imposing broad or vague restrictions under the pretext of combatting hate expression**.[[67]](#footnote-67)

Such considerations will be particularly relevant when peaceful assemblies advocating for migrant, LGBTI, or other minority rights are met with counter-protests characterized by incitement to hatred. The European Court of Human Rights has issued several judgments in recent years developing duties under Article 8 of the European Convention on Human Rights (private and family life) to limit racist expression in protest contexts.[[68]](#footnote-68)

**ANNEX A:**

**PRINCIPLE 1 AND ACCOMPANYING GUIDELINES**

**of the**

**PRINCIPLES AND GUIDELINES ON PROTEST AND THE RIGHT TO INFORMATION**

**Issued by the Open Society Justice Initiative and the Committee on the Administration of Justice (2018)**

https://www.right2info.org/resources/publications/principles-and-guidelines-on-protest-and-the-right-to-information/view

**PRINCIPLE 1**: **Public authorities should make proactively available information that individuals and watchdogs need in order to be able to: (a) exercise democratic oversight of the policing of protest and promote accountability; (b) safeguard rights to freedom of assembly and expression; and (c) be aware of conduct that could result in penalties.**

***GUIDELINES:***

1. Public authorities should proactively publish in accessible formats,[[69]](#footnote-69) including for persons with disabilities, and in all of the jurisdiction’s official languages, and should supply upon request and free of charge:
2. the laws, regulations, executive decrees, judicial orders, official interpretations, and other legally binding documents that can be used to facilitate or limit protests (hereafter referred to as “the legal framework”);
3. the policy documents concerning protests that bind or guide decision-makers, as well as police standard operating procedures (SOPs), training manuals (both in-service and trainee), and disciplinary codes and procedures concerning matters that may arise during protests;
4. the types of equipment routinely used in managing assemblies, and equipment available for exceptional situations, including appropriate protective gear;
5. information regarding the responsibilities and procedures of agencies and bodies that manage protests;
6. information about special units that may be deployed, including military units and private security companies; and
7. the procedures for requesting information from, submitting complaints to, and lodging appeals with, relevant public authorities, including oversight bodies.
8. The above-listed information should never be withheld. Authorities should routinely generate such information and draft said documents bearing in mind the public’s right of access to them, and should include any operational details in separate annexes to facilitate transparency without imposing unnecessary administrative burdens. If a document includes both information that falls into any of the above categories as well as operational details, the operational details may be redacted in accordance with permissible restrictions on the right of access to information set forth in international law, if necessary and proportionate to protect a legitimate interest such as public safety or crime prevention. Release of annexes containing operational details should also be subject to such a test.[[70]](#footnote-70)

1. The legal framework, policy documents, SOPs, training manuals, and disciplinary codes and procedures should address, in particular, the following items, because missteps in these areas could result in human rights violations and/or injuries to police, protesters or by-standers, and because detailed written policies and related materials can assist in promoting compliance and effective monitoring:[[71]](#footnote-71)
2. the circumstances in which dispersal of protests or arrest of protesters are permissible;
3. the permissible uses of force in various circumstances;
4. the handling of counter-protests;
5. the right of the media and other public watchdogs to observe and record protests;
6. the use of surveillance and agents (informants and undercover officers) in a protest context; and
7. any duties imposed on protestors, including any notification requirements.
8. Policy documents, SOPs, training manuals, and disciplinary codes and procedures (but not necessarily the legal framework itself) should, in addition to the matters noted in section (c), above, address the following topics:[[72]](#footnote-72)
9. procedures for communicating with protesters, the media, and bystanders;
10. use of equipment (including weapons, offensive equipment, drones, and other new technologies), and the basis for approving the acquisition of new equipment;
11. handling of traffic to accommodate protests, and planning for safe and sufficient routes for dispersal of demonstrators;
12. duties to document information, including as elaborated in Principles 4, 5, 6, 8, and 10;
13. details of the relevant law enforcement leadership chain of command;
14. procedures for handling injuries suffered by police, protesters, and bystanders; and
15. protest-related criminal investigation procedures, bail criteria, interpretation of offenses, and test for prosecution.

1. The Principles define “protest” to “cover all types of activity involving expressive assembly, including one person, *ad hoc* or spontaneous protests, long-term occupations, and all manifestations in between, including where there is no identifiable or actual organizer(s).” ` [↑](#footnote-ref-1)
2. These Principles and Guidelines are posted, in English and Spanish, at <https://www.right2info.org/resources/publications/principles-and-guidelines-on-protest-and-the-right-to-information/view>. They have been proposed for inclusion in reports to be issued in 2019 by the Inter-American Commission on Human Rights and the OSCE-ODIHR and Venice Commission Working Group on Freedom of Peaceful Assembly. They are under consideration by the Ibero-American Network of Information Commissioners, and will be discussed at the 2019 International Conference of Information Commissioners in Johannesburg. [↑](#footnote-ref-2)
3. This principle forms Principle 1 of the Justice Initiative-CAJ Principles on Protest and the Right to Information, which is attached, together with accompanying Guidelines, to this submission, as Annex A. [↑](#footnote-ref-3)
4. See. e.g., Report to the General Assembly of the Special Representative of the Secretary-General on the situation of human rights defenders, UN Doc. A/62/225, 13 August 2007, para. 91 (regarding the importance of monitoring to the effective enjoyment of the right to peaceful assembly). [↑](#footnote-ref-4)
5. Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of

   association, Maina Kiai, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on the proper management of assemblies, UN Doc A/HRC/31/66 (4 February 2016) [“Joint Report”], Recommendation D on the duty of States to facilitate the exercise of the right to peaceful assembly, para. 37. [↑](#footnote-ref-5)
6. HRC General Comment 34, 12 September 2011, paras. 18 and 7. *See also* Inter-American Court of Human Rights, Claude Reyes, et al., v. Chile, 19 Sept. 2006, paras. 77-82; and European Court of Human Rights, Magyar Helsinki Bizottság v Hungary, Grand Chamber Judgment, 8 Nov. 2016, paras. 157-168. [↑](#footnote-ref-6)
7. General Comment 34, para. 19. [↑](#footnote-ref-7)
8. See the Global Right to Information Rating, produced by Access Info Europe and the Center for Law and Democracy, at <http://www.rti-rating.org/country-data>; and a list of the 127 laws, as of Sept. 2018, organized by region, compiled by the Justice Initiative, at <https://www.right2info.org/laws/constitutional-provisions-laws-and-regulations>. Th 90% figure was calculated from the data provided on the Worldometers website, “Countries of the world by population” (2018), based on data from the latest *United Nations Population Division* estimates: http://www.worldometers.info/world-population/population-by-country/. [↑](#footnote-ref-8)
9. See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc. A/68/362 (4 Sept. 2013) [UN FOE Report A/68/362 2013], para. 19; see also HRC General Comment 16 (on Article 17 Right to Privacy), para. 10; and HRC General Comment 34, para. 18. [↑](#footnote-ref-9)
10. Updated set of principles for the protection and promotion of human rights through action to combat impunity ([E/CN.4/2005/102/Add.1](http://undocs.org/E/CN.4/2005/102/Add.1)), Principle 4. [↑](#footnote-ref-10)
11. HR Council Res. 12, UN Doc. A/HRC/Res/12/12, issued 12 Oct 2009, pream. para. 14. [↑](#footnote-ref-11)
12. See ICCPR Art. 14, ACHR Art. 8(1), and ECHR Art. 6(1). [↑](#footnote-ref-12)
13. Joint Report, para. 79. [↑](#footnote-ref-13)
14. Id., para. 82(a). [↑](#footnote-ref-14)
15. See para. 8, *supra*. [↑](#footnote-ref-15)
16. Joint Report, para. 89 [↑](#footnote-ref-16)
17. PACE Resolution 2116 (2016). [↑](#footnote-ref-17)
18. Article 19, “The Right to Protest: Principles on the Protection of Human Rights in Protests” (London: 2016), Principles 17.1, 18.1, and 18.2. [↑](#footnote-ref-18)
19. Model Inter-American Law on access to public information, adopted by the General Assembly of the Organization of American States, June 8, 2010, AG/RES. 2607 (XL-O/10) [Model Inter-American ATI Law], arts. 12 and 13; Model Law on Access to Information for Africa, adopted by the African Commission on Human and Peoples' Rights on 25 Feb. 2013, and launched on April 2013 [Model ATI Law for Africa], secs. 6 and 7. [↑](#footnote-ref-19)
20. European Code of Police Ethics, Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 Sept. 2001, Appendix, Legal basis of the police under the rule of law, point 4. [↑](#footnote-ref-20)
21. General Comment No. 34, para. 18; Joint Report, para. 81; Joint Declaration by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur for freedom of expression (6 December 2004); Model Inter-American ATI Law: public authorities may deny access to information only when “it is legitimate and strictly necessary in a democratic society [to do so], based on the standards and jurisprudence of the Inter-American system.” [↑](#footnote-ref-21)
22. See for example UN FOE Report A/68/362 2013: “whenever a State imposes restrictions on the exercise of the right to freedom of expression, such restrictions may not put in jeopardy the right itself, much less when the information requested relates to human rights violations.” [↑](#footnote-ref-22)
23. Model Inter-American ATI Law, Arts. 41 and 44 (“these exemptions do not apply to information concerning serious violations of human rights”). [↑](#footnote-ref-23)
24. See, e.g., the Justice Initiative – CAJ Principles on Protest and RTI, fn. 9: “’Operational details’ that legitimately may be withheld from the public include details of plans, operations, and capabilities whose disclosure could thwart legitimate law enforcement activities.” [↑](#footnote-ref-24)
25. The Report of the Independent Commission on Policing for Northern Ireland (the Patten Commission), Sept. 1999, para. 6.38. [↑](#footnote-ref-25)
26. Joint Report, para. 16. [↑](#footnote-ref-26)
27. Relevant resources in the area of human rights indicators include OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation*, UN Doc HR/PUB/12/5 (2012);; and OAS and Working Group on the Protocol of San Salvador, Progress Indicators for Measuring Rights under the Protocol of San Salvador [on Economic, Social and Cultural Rights], OEA/Ser.D/XXVI.11 (2015). [↑](#footnote-ref-27)
28. CERD General recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, UN Doc. CERD/C/GC/31, paras. 1(f), 13, 20 & 22. [↑](#footnote-ref-28)
29. IACHR, Annual Report 2015, Chapter VI, para. 215. [↑](#footnote-ref-29)
30. ECRI General Policy Recommendation N°11 on Combating racism and racial discrimination in policing, adopted on 29 June 2007, Recommendation I(2). [↑](#footnote-ref-30)
31. Joint Report, para. 36(b), see also para. 21. [↑](#footnote-ref-31)
32. Id., para. 65. [↑](#footnote-ref-32)
33. Id. [↑](#footnote-ref-33)
34. Id. [↑](#footnote-ref-34)
35. OSCE/ODIHR Human Rights Handbook on Policing Assemblies (March 2016), page 116. [↑](#footnote-ref-35)
36. Id., page 62. [↑](#footnote-ref-36)
37. Prof. Yuval Shany, “On-Line Surveillance in the case-law of the UN Human Rights Committee,” 13 July 2017, citing General Comment No 35, para. 12, at <https://csrcl.huji.ac.il/people/line-surveillance-case-law-un-human-rights-committee>. [↑](#footnote-ref-37)
38. HRC Concluding Observations: Turkmenistan (2017); and USA (2014). See also Concluding Observations: UK (2015); and New Zealand (2016) [↑](#footnote-ref-38)
39. HRC Concluding Observations: USA (2014); and UK (2015). See also Concluding Observations: South Africa (2016); and Turkmenistan (2017). [↑](#footnote-ref-39)
40. HRC Concluding Observations: UK (2015); France (2015); Rwanda (2016); Namibia (2016) [↑](#footnote-ref-40)
41. Joint Report, para. 77. [↑](#footnote-ref-41)
42. HRC Concluding Observations: Turkmenistan (2017). [↑](#footnote-ref-42)
43. HRC Concluding Observations: France (2015). [↑](#footnote-ref-43)
44. See also HRC Concluding Observations: South Africa (2016). [↑](#footnote-ref-44)
45. HRC Concluding Observations: Sweden (2016). [↑](#footnote-ref-45)
46. Joint Report, para. 77. [↑](#footnote-ref-46)
47. For example, the Code of the [US] District of Columbia *Rules for investigations and preliminary inquiries*  prohibit undercover officers and informants from “[e]ngaging in any conduct the purpose of which is to disrupt, prevent, or hinder the lawful exercise of First Amendment [free expression] activities” or “[i]nitiating, proposing, approving, directing, or suggesting unlawful acts or a plan to commit unlawful acts . . . .” §5-333.08(b)(5) and (3). [↑](#footnote-ref-47)
48. E.g., European Court of Human Rights, *Bannikova v Russia*, Application no18757/06, Judgment of 4 Nov. 2010, para 35; and Teixeira de Castro v Portugal. Application no 44/1997/828/1034, Judgment of 9 June 1998. [↑](#footnote-ref-48)
49. For instance, in several US States, legally binding consent decrees were entered into to preclude practices of police spying on non-violent political and protest groups. E.g., American Civil Liberties Union, et al. v. City Of Chicago, et al., Nos. 74 C 3268, 75 C 3295, 30 March 1982, Agreed Order, Judgment and Decree issued 8 April 1982, at paras 3.6.2 & 3.6.3.1. [↑](#footnote-ref-49)
50. OSCE Human Rights Handbook on Policing Assemblies (March 2016), p. 38: “Where a decision is made to restrict the rights of those participating in the assembly … (such as the use of covert officers), then a clear and transparent written record of the decision must be made, and it must be linked to the individual officer who made the decision. Any such decisions should be subject to review in the debriefing process and may be provided in any enquiry into police practice.” See also HRC Concluding Observations: Sweden (2016). [↑](#footnote-ref-50)
51. Concluding observations on the third periodic report of the Republic of Moldova, UN Doc. CCPR/C/MDA/CO/3 (18 November 2016), para 34: “The State party should… take appropriate measures to ensure that organizers and participants of assemblies do not face any acts of intimidation, including police interference prior to the organization of assemblies.” [↑](#footnote-ref-51)
52. OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly (Second Edition, 2010), paragraph 4.4. [↑](#footnote-ref-52)
53. Joint Report, para 24. [↑](#footnote-ref-53)
54. Joint Report, fn. 14. [↑](#footnote-ref-54)
55. See Handyside v. United Kingdom, application no. [5493/72](https://hudoc.echr.coe.int/eng#{%22appno%22:[%225493/72%22]}), 7 Dec. 1976. [↑](#footnote-ref-55)
56. Communication No. 1873/2009, UN Doc. CCPR/C/109/D/1873/2009, issued 2 Dec. 2013, para. 2.3. [↑](#footnote-ref-56)
57. Id., para. 9.6. [↑](#footnote-ref-57)
58. See Amnesty International Dutch Section, Policing Assemblies, Short Paper Series 1, p. 5; and IACHR Hearing on Social Protest and Human Rights in the Americas, cited in IACHR Annual Report 2015, p. 525. [↑](#footnote-ref-58)
59. Joint Report, para 16. [↑](#footnote-ref-59)
60. Protected grounds include “race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or career status, language, religion or belief, political or other opinion, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender, identity, age, disability, property or other established status.” See, e.g., ICESCR General Comment No. 20: Non-discrimination in economic, social and cultural rights”; OSCE/ODIHR-Venice Commission Guidelines on Peaceful Assembly (Second Edition, 2010), at para. 48. [↑](#footnote-ref-60)
61. Helsinki Foundation for Human Rights, “Constitutional Tribunal: amendments to Assemblies Act constitutional despite all objections,” 16 March 2017, at <http://www.hfhr.pl/en/constitutional-tribunal-amendments-to-assemblies-act-constitutional-despite-all-objections/>. [↑](#footnote-ref-61)
62. Article 52.1 of the Code of Minor Offences, Article 195 of the Criminal Code. See Amnesty International. “Poland: Concerns over large-scale prosecution of protesters”, 22 June 2017. [↑](#footnote-ref-62)
63. Under the Public Processions (Northern Ireland) Act 1998 (as amended). [↑](#footnote-ref-63)
64. ICCPR Article 20 (2); and ICERD Article 4(a)*.* See also HRC General Comment 34 (CCPR/C/GC/34), paragraph 28, concerning “the rights of others”. [↑](#footnote-ref-64)
65. CERD/C/GC/35 General Recommendation 35, para. 12; see also UN Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012). [↑](#footnote-ref-65)
66. See Joint Report, paras. 33 and 62. See also R.B. V. Hungary (no. 64602/12) 12 April 2016 [99] “*in certain situations the domestic authorities might be required to proceed with the dispersal of a violent and blatantly intolerant demonstration for the protection of an individual’s private life under Article 8*.” [↑](#footnote-ref-66)
67. See CERD/C/GC/35 General Recommendation 35, para. 20. [↑](#footnote-ref-67)
68. See, e.g., Vona v. Hungary, application no. 35943/10, issued 9 July 2013. *Compare* Aksu v. Turkey [GC], application nos. 4149/04 and 41029/04, paras. 58-60, 15 March 2012 (“[A]ny negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group’s sense of identity and the feelings of self-worth and self-confidence of members of the group. It is in this sense that it can be seen as affecting the private life of members of the group.”) [↑](#footnote-ref-68)
69. In jurisdictions where a significant percentage of the population communicates orally, it is good practice to make information available orally as well. [↑](#footnote-ref-69)
70. “Operational details” that legitimately may be withheld from the public include details of plans, operations, and capabilities whose disclosure could thwart legitimate law enforcement activities. [↑](#footnote-ref-70)
71. For instance, written and publicly available notification requirements can help public watchdogs ensure that the requirements are not so onerous as to constitute *de facto* authorization requirements, which violate protest rights. An assessment of these documents can also determine whether any protest-related powers granted to the military or private security contractors are human rights compliant. [↑](#footnote-ref-71)
72. The items in this sub-paragraph, while important, are more detailed than the types of information typically addressed by the legal framework, and for that reason they are listed separately from the items in sub-paragraph (c). [↑](#footnote-ref-72)