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Washington D.C., March 4, 2019

Prof. Christof Heyns  
Rapporteur  
United Nations Human Rights Committee

**Re: General Comment on Article 21 of the International Covenant on Civil and Political Rights**

Dear Prof. Heyns,

On behalf of Robert F. Kennedy Human Rights, please find enclosed a submission to the Human Rights Committee in preparation for its General Comment on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights.

Robert F. Kennedy Human Rights is a non-profit organization based in the United States. Since 1968, Robert F. Kennedy Human Rights has worked alongside human rights defenders and civil society organizations across the globe to pursue lasting change on key human rights issues, including the protection of civic space. We are involved in litigation before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights as well as the African System and United Nations mechanisms. Further, we offer trainings to civil society organizations and human rights attorneys and maintains close links with global and regional networks promoting collaboration on litigation and advocacy initiatives. Within this work, the organization takes great interest in the development of jurisprudence and legal standards that have a profound effect on civic space matters including freedom of assembly.

Given our experience with the jurisprudence of the Inter-American system, Robert F. Kennedy Human Rights has prepared answers to some of the Committee's questions on Freedom of Assembly based on the reports and decisions of the Court and the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "Abe", with a stylized flourish at the end.

Angelita Baeyens  
Programs Director  
International Advocacy and Litigation  
Robert F. Kennedy Human Rights

*On the brief:*

Naomi Glassman  
Dale and James Pinto Fellow

**Written Submission by Robert F. Kennedy Human Rights**  
**In preparation of the General Comment on Article 21 (right to peaceful assembly) of the**  
**International Covenant on Civil and Political Rights**

March 4, 2019

**Introduction**

Robert F. Kennedy Human Rights is a non-profit organization based in the United States. Since 1968, Robert F. Kennedy Human Rights has worked alongside human rights defenders and civil society organizations across the globe to pursue lasting change on key human rights issues, including the protection of civic space. We are involved in litigation before the Inter-American Commission on Human Rights [hereinafter “IACHR” or “the Commission”], and the Inter-American Court of Human Rights [hereinafter “the Court”] as well as the African System and United Nations mechanisms. Further, Robert F. Kennedy Human Rights offers trainings and workshops to civil society organizations and human rights attorneys in Latin America, Africa, and parts of Asia, and maintains close links with global and regional networks promoting collaboration on litigation and advocacy initiatives. Within this work, the organization takes great interest in the development of jurisprudence and legal standards that have a profound effect on civic space matters including freedom of assembly.

Given our experience with the jurisprudence of the Inter-American system, Robert F. Kennedy Human Rights has prepared answers to some of the Committee’s questions on Freedom of Assembly based on the reports and decisions of the Court and the Commission.

The right to freedom of assembly is protected in Article 15 of the American Convention on Human Rights:<sup>1</sup>

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

The Court has found a violation of Article 15 in only two cases so far: *Lopez Lone v. Honduras*<sup>2</sup> and *Women Victims of Sexual Torture of Atenco v. Mexico*.<sup>3</sup> However, the Special Rapporteurship on Freedom of Expression and the Rapporteurship on the Situation of Human Rights Defenders at the Commission have developed some standards on Freedom of Assembly as part of country and thematic reports produced by the IACHR.

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<sup>1</sup> Organization of American States, American Convention on Human Rights (ACHR), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, Art. 15.

<sup>2</sup> *Lopez Lone v. Honduras*, Inter-Am. Ct. H.R., Judgment of Oct. 5, 2015, Preliminary Objections, Merits, Reparations and Costs, Ser. C, No. 302

<sup>3</sup> *Women Victims of Sexual Torture in Atenco v. Mexico*, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371

## **Responses to the questions raised by the Committee:<sup>4</sup>**

### **1.1 What are the unique features of the right to peaceful assembly, which distinguishes it from other related rights such as freedom of expression and political participation?**

The Inter-American system has primarily recognized the right to freedom of assembly as directly connected to the right to freedom of expression.<sup>5</sup> In one report, the Rapporteurship explicitly recognized that public protest and the freedom of assembly are a “collective form” of freedom of expression.<sup>6</sup>

However, in the *Atenco* case, the Court found a violation of the right to freedom of assembly without any impact on freedom of expression, stating:

This Court considers that both rights (freedom of assembly and expression) are intrinsically related. ... the exercise of freedom of assembly is a form of the exercise of freedom of expression. ... a violation of the right to freedom of assembly can impact freedom of expression. Nevertheless, for there to be an autonomous violation of the freedom of expression, distinct from the content inherent in freedom of assembly, it would be necessary to show that the same was affected beyond the impact intrinsic in the recognized violation of freedom of assembly. In the present case, the facts relate to the use of force to impede and disperse a protest. It has not been alleged by the Commission nor by the petitioners any specific restriction on the right of expression or opinion of the eleven women, beyond their right to be present at the protest.<sup>7</sup>

As seen here, the Court has found that freedom of assembly involves the ability to be present at a protest, and to be free from violent reprisals, independent of the content of the speech and protest, which would be protected by freedom of expression as well.

In another case, the Court found a violation to freedom of association, but not the freedom of assembly, because the protest itself “took place without any interruptions or restrictions.”<sup>8</sup> Here, again, the Court separates the violations based on the impact on the rights to freedom of association, assembly, and expression.

### **1.2. What is the function, added value and rationale for this right in a social system based on democracy and human rights?**

The IACHR Special Rapporteurship on Freedom of Expression emphasized in its 2005 Annual Report that “societal participation through public demonstrations is important for the consolidation of democratic

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<sup>4</sup> According to the note prepared by the Rapporteur on Issues for consideration during a half-day general discussion in preparation for a General Comment on article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights.

<sup>5</sup> *See, for example*, IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2017. OEA/Ser.L/V.II. Doc. 210/17. (Dec. 31, 2017), para. 41; IACHR. Report on Citizen Security and Human Rights. OEA/Ser.L/V/II.Doc.57 (Dec. 31, 2009), para. 197.

<sup>6</sup> IACHR, Special Rapporteur for Freedom of Expression, A Hemispheric Agenda for the Defense of Freedom of Expression, OEA/Ser.L/V/II CIDH/RELE/INF. 4/09 (Feb. 25, 2009), para. 71-72.

<sup>7</sup> Women Victims of Sexual Torture in *Atenco v. Mexico*, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371, para. 173. (Translation by Robert F. Kennedy Human Rights)

<sup>8</sup> Ricardo Baena et al. v. Panama, Inter-Am. Ct. H.R., Judgment of Feb. 2, 2001, Merits, Reparations and Costs, Ser. C. No. 72, para. 148.

life of societies.”<sup>9</sup> The Commission, in a report on Human Rights in Nicaragua from 2018, explained further that “public demonstrations and other forms of protest against government plans or policies” are key to enabling the democratic process, including political participation and debate on public policies.<sup>10</sup> Similarly, in *Lopez Lone*, the Court found that freedom of assembly, in conjunction with other political rights including freedom of expression and freedom of association, enable democratic debate and the ability to guarantee other human rights.<sup>11</sup>

### **1.3 Does the scope of the right differ depending on the context (for example, is it the same during political transitions)?**

The Court and Commission have both explicitly recognized the importance of protecting freedom of assembly during political transitions. In *Lopez Lone*, the Court stated that “In situations of institutional rupture, after a coup, the relation between [freedom of expression, assembly, association, and political participation] is even more apparent, especially when they are exercised together to protest against the actions of state powers that violate the constitutional order and to call for the return to democracy.”<sup>12</sup> Additionally, in its report on Nicaragua, the Commission stated that:

In circumstances of political crisis and social conflict such as what Nicaragua is now experiencing it is essential to bring about the conditions needed for the unrestricted exercise of the rights to freedom of expression, assembly, and political participation. This implies ensuring that the state response to demonstrations and expressions of dissent... is done from a management approach that accords priority to communication, cooperation, and sharing information over intensifying the use of police force and other coercive measures.<sup>13</sup>

The Commission and the Court thus recognize that freedom of assembly may be more prominent in situations of political transitions, and more vulnerable, and must be protected.

### **2.1 How should the term ‘peaceful assembly’ be understood? When is one dealing with an assembly? .... Does it cover strikes? Or do all gatherings (e.g., also sporting, religious, cultural events, or) qualify as “assemblies”? .... In order to qualify as an assembly, are there requirement about where should the gathering take place -- in public, private or on-line?**

The Inter-American system has not explicitly defined the term ‘peaceful assembly.’ Instead, they have recognized a range of situations that fall under the term ‘peaceful assembly’: demonstrations, protests,

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<sup>9</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2005, Chapter V. Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly. OEA/Ser.L/V/II.124 Doc. 7 (Feb. 27, 2006) para. 91; *see also* IACHR, Democratic Institutions, the Rule of Law and Human Rights in Venezuela, OEA/Ser.L/V/II. Doc.209 (Dec. 31, 2017), para. 223

<sup>10</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II. Doc. 86 (June 21, 2018), para. 54-55.

<sup>11</sup> *Lopez Lone v. Honduras*, Inter-Am. Ct. H.R., Judgment of Oct. 5, 2015, Preliminary Objections, Merits, Reparations and Costs, Ser. C, No. 302, para. 160.

<sup>12</sup> *Lopez Lone v. Honduras*, Inter-Am. Ct. H.R., Judgment of Oct. 5, 2015, Preliminary Objections, Merits, Reparations and Costs, Ser. C, No. 302e, para. 160. (Translation by Robert F. Kennedy Human Rights).

<sup>13</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II. Doc. 86 (June 21, 2018), para. 282

marches, strikes, road blockages, occupation of public space.<sup>14</sup> Additionally, the Commission has protected the right to assemble for “any public act, assembly, election, conference, parade, congress, or sports, cultural, artistic or family event.”<sup>15</sup>

The Court in the *Case of Escher et al. V. Brazil* found that “the right of assembly does not necessarily involve the creation of or participation in an entity or organization, but can be expressed in a sporadic meeting or assembly for very diverse purposes.”<sup>16</sup> Additionally, the Court explicitly found in *Lopez Lone* that freedom of assembly includes “private meetings as well as meetings in public, whether those are static or involve movement.”<sup>17</sup> The Commission has found that the right to assembly additionally includes assemblies in places of business, where workers are involved.<sup>18</sup> The Commission has stated that people have the right to freedom of assembly both online and offline.<sup>19</sup>

**2.2. When is an assembly not ‘peaceful’, and fall outside the scope of the protection of the particular right? What level of violence (or mere disruption?) is required to consider it peaceful? To what extent can the violent conduct of certain individuals participating in the assembly be attributed to the group as a whole and render an assembly as a whole not peaceful?**

The American Convention states that a peaceful assembly is one “without arms.”<sup>20</sup> The Commission has clarified that “without arms” means that the assembly is peaceful.<sup>21</sup> When participants in a peaceful assembly act with violence, they lose the protection inherent in the right to peaceful assembly.<sup>22</sup>

However, both the Commission and the Court address the need to distinguish between violent and non-violent participants in an assembly. In particular, the IACHR has determined that where “violent incidents break out at peaceful gatherings, authorities have the duty to differentiate between peaceful and non-peaceful demonstrations.”<sup>23</sup> The Court, citing the European Court of Human Rights, has also emphasized

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<sup>14</sup> IACHR, Special Rapporteur for Freedom of Expression, A Hemispheric Agenda for the Defense of Freedom of Expression, OEA/Ser.L/V/II CIDH/RELE/INF. 4/09 (Feb. 25, 2009), para. 71; IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 (Dec. 31, 2015), para. 127.

<sup>15</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 (Dec. 31, 2015), para. 129, FN. 190; IACHR, Annual Report 1979-1980, OEA/Ser.L/V/II.50, (Oct. 2, 1980), pp. 119-121.

<sup>16</sup> *Escher et al. vs. Brazil*, Inter-Am. Ct. H.R., Judgment of July 6, 2009, Preliminary Objections, Merits, Reparations, and Costs, Ser. C. No. 200, para. 169.

<sup>17</sup> *Lopez Lone v. Honduras*, Inter-Am. Ct. H.R., Judgment of Oct. 5, 2015, Preliminary Objections, Merits, Reparations and Costs, Ser. C, No. 302, para 167, citing *Eur. Ct. H.R., Djavit An vs. Turkey*, No. 20652/92, Judgment of Feb. 20, 2003, para. 56. *See also*, *Women Victims of Sexual Torture in Atenco v. Mexico*, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371, para. 171. (Translation by Robert F. Kennedy Human Rights).

<sup>18</sup> IACHR, Report on the Situation on Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124.Doc. 5 rev. 1 (Mar. 7, 2006), para. 53.

<sup>19</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Standards for a Free, Open, and Inclusive Internet, OEA/Ser.L/V/II (March 15, 2017), para. 65.

<sup>20</sup> Organization of American States, American Convention on Human Rights (ACHR), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, Art. 15.

<sup>21</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II. Doc. 86 (June 21, 2018), para. 66.

<sup>22</sup> *Women Victims of Sexual Torture in Atenco v. Mexico*, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371, para. 175.

<sup>23</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II. Doc. 86 (June 21, 2018), para 66.

the duty of state authorities to differentiate violent people from peaceful protesters,<sup>24</sup> and that sporadic acts of violence or crimes committed by certain people should not be attributed to other whose intentions or behavior are of a peaceful nature.<sup>25</sup> As such, the Commission and Court have both specifically stated where the violence is the conduct of certain individuals, e.g. agent provocateurs, their violence is not a license for violence in response.<sup>26</sup>

### **3.1. Is freedom of assembly an individual or a collective right, or both?**

The Court has protected the right to freedom of assembly for individuals,<sup>27</sup> or as individuals who are part of a group.<sup>28</sup> In *Atenco*, the Court stated that “the right to peaceful assembly attends to each person who participates in a meeting.”<sup>29</sup> However, in *Lopez Lone*, the Court found that the right of freedom of assembly does not apply equally to all persons, but rather that judges, by virtue of their public role in the administration of justice, may be subject to specific restrictions.<sup>30</sup>

**4. Article 2 (1) of the ICCPR requires States to ‘respect and ensure’ the rights in the ICCPR. ... Does it mean that, while people exercise this right, the focus of law enforcement officials should be primarily on protecting the rights of all concerned rather than upholding law and order? (Are States thus required to show a certain level of tolerance to conduct when engaged in as part of peaceful assembly, and not meet it with the same force of the law as it would otherwise do?)**

Although no specific case law from the Inter-American system addresses this point, the IACHR Special Rapporteurship on Freedom of Expression has found “that the police may impose reasonable restrictions upon demonstrators to ensure that they are peaceful or to restrain those that are violent, as well as to disperse demonstrations that turn violent or obstructive. However, the action on the part of security forces should not discourage the right to assembly, but to the contrary, protect it; hence, the dispersing of a demonstration should be justified by the duty to protect the people. A security operation deployed in this context must use the means for dispersal that are the safest, swiftest, and least harmful to the demonstrators.”<sup>31</sup>

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<sup>24</sup> Women Victims of Sexual Torture in *Atenco v. Mexico*, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371, para. 175, citing Eur. Ct. H.R., *Gsell vs. Switzerland*, No.12675/05. Judgment of October 8, 2009, para. 60.

<sup>25</sup> Women Victims of Sexual Torture in *Atenco v. Mexico*, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371, para. 175, citing Eur. Ct. H.R., *Ziliberg v. Moldova*, No. 61821/00. Judgment of February 1, 2005.

<sup>26</sup> IACHR, *Democratic Institutions, the Rule of Law and Human Rights in Venezuela*, OEA/Ser.L/V/II. Doc.209 (Dec. 31, 2017), para 209; Women Victims of Sexual Torture in *Atenco v. Mexico*, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371 para. 175.

<sup>27</sup> *Lopez Lone v. Honduras*, Inter-Am. Ct. H.R., Judgment of Oct. 5, 2015, Preliminary Objections, Merits, Reparations and Costs, Ser. C, No. 302 para. 178.

<sup>28</sup> Women Victims of Sexual Torture in *Atenco v. Mexico*, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371 para. 175.

<sup>29</sup> Women Victims of Sexual Torture in *Atenco v. Mexico*, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371, para. 175. (Translation by Robert F. Kennedy Human Rights).

<sup>30</sup> *Lopez Lone v. Honduras*, Inter-Am. Ct. H.R., Judgment of Oct. 5, 2015, Preliminary Objections, Merits, Reparations and Costs, Ser. C, No. 302, para 169. However, in *Lopez Lone*, these restrictions on judges did not apply because the protest occurred during a coup. *Id.*

<sup>31</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2005, Chapter V. Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly. OEA/Ser.L/V/II.124 Doc. 7 (Feb. 27, 2006), para. 98.

**5. More specifically, what are the (negative and positive) obligations placed by the right of peaceful assembly on the State? How should the right be *respected* by the State (e.g. through the adoption of laws providing for and regulating its exercise in accordance with international law)? How should it be *protected*? To what extent does the State have an obligation to protect those engaged in peaceful assembly from interference by other members of the public? And should counter-demonstrations be protected to the same extent?**

The Commission has recommended positive obligations to States to protect the right to freedom of assembly such that it “is not subject to authorization by the authorities nor to excessive requirements that hinder its enjoyment. ... the limitations placed on public and peaceful demonstrations are strictly to prevent serious threats and imminent danger from materializing.”<sup>32</sup> These positive obligations include taking the “administrative and law enforcement steps necessary... such as detouring traffic and providing police protection for demonstrators and rallies.”<sup>33</sup>

In the *Atenco* case, the Court ordered the State of Honduras to provide a “training for police agents about the standards for use of force in the context of social protests”<sup>34</sup> In addition, the Commission has provided for what it terms a “management approach” to protests such that the government response prioritizes “communication, cooperation, and sharing information over intensifying the use of police force and other coercive measures.”<sup>35</sup>

Additionally, the Commission has found that state authorities have a positive obligation to ensure that non-state actors do not prevent an assembly from taking place.<sup>36</sup> On counter-demonstrators, the Commission has said that “the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.”<sup>37</sup>

**6. When and how may the right of peaceful assembly be limited? ... Is it correct to say there is a ‘presumption’ under the Covenant in favour of allowing peaceful assemblies, and the onus is on those wishing to restrict such assemblies to justify such limitations? How should the procedural requirement for limitations on the right in sentence two of article 21 (that limitations can only be imposed ‘by law’) and the substantive requirements (this can be done only where it is necessary to protect national security, etc.) be understood? ...**

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<sup>32</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 (Dec. 31, 2015), para. 286.13.

<sup>33</sup> IACHR, Report on the Situation on Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124.Doc. 5 rev. 1 (Mar. 7, 2006), para. 54, citing Eur. Ct. H.R., Platform “Artze fur das Leben” v. Austria, Judgment of June 21, 1988, para. 32.

<sup>34</sup> Women Victims of Sexual Torture in *Atenco v. Mexico*, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371, para. 355. (Translation by Robert F. Kennedy Human Rights).

<sup>35</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II. Doc. 86 (June 21, 2018), para. 282

<sup>36</sup> IACHR, Report on the Situation on Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124.Doc. 5 rev. 1 (Mar. 7, 2006), para. 54

<sup>37</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2005, Chapter V. Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly. OEA/Ser.L/V/II.124 Doc. 7 (Feb. 27, 2006), para. 59, 100, citing Eur. Ct. H.R., Platform “Artze fur das Leben” vs. Austria, Judgment of June 21, 1988, para. 32.

The Commission has recognized that the right to freedom of assembly may be limited “to ensure respect for the rights of others or the protection of national security, public order or public health or morals.”<sup>38</sup> Further, any such limitation must be legal, necessary, and proportionate.<sup>39</sup>

According to the Commission, any restriction or limitation on the right to freedom of assembly must be laws procedurally passed by the legislature and signed by the executive.<sup>40</sup> Further, any such law limiting freedom of assembly, must be “established in advance, expressly, restrictively and clearly.”<sup>41</sup> Finally, any such law, must be “justified by an imperative social interest, as well as being genuinely necessary in a democratic society and proportionate to achieving that aim.”<sup>42</sup>

Substantively, the Commission has recognized that concepts such as national security must be interpreted to protect human rights and democracy.<sup>43</sup> Any substantive restriction on the right to freedom of assembly “must be intended exclusively to prevent serious and imminent dangers” to national security, peace, or order, and the “general possibility of future danger is insufficient.”<sup>44</sup>

The Inter-American system has recognized a presumption in favor of allowing peaceful assemblies.<sup>45</sup> As part of this presumption, the Commission has found an assumption that assemblies are peaceful and not a threat; an assumption that “should be clearly and expressly established in the laws of states and apply to all without discrimination.”<sup>46</sup>

## **8. Should those wishing to exercise this right be required to apply for authorisation; or merely be required to notify the authorities ... ?**

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<sup>38</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 (Dec. 31, 2015), para. 120

<sup>39</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 (Dec. 31, 2015), para. 120; IACHR, Annual Report 2007, Venezuela, OAS.Ser.L/V/II.130, (Dec. 29, 2007), para. 260

<sup>40</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, OEA/Ser.L/V/II.Doc.22 (Mar. 15, 2017), para. 204

<sup>41</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, OEA/Ser.L/V/II.Doc.22 (Mar. 15, 2017), para. 205; *see also* IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 69; and Inter-Am. Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of Nov. 13, 1985. Ser. A No. 5, pars. 39-40

<sup>42</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, OEA/Ser.L/V/II.Doc.22 (Mar. 15, 2017), para. 194; IACHR, 2002 Annual Report, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV, “Freedom of Expression and Poverty,” para. 31; 2005 Annual Report, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, March 7, 2006, para. 55

<sup>43</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, OEA/Ser.L/V/II.Doc.22 (Mar. 15, 2017), para. 206.

<sup>44</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2005, Chapter V. Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly. OEA/Ser.L/V/II.124 Doc. 7 (Feb. 27, 2006) para. 95; IACHR, Chapter IV, Annual Report 2002, Vol. III, “Report of the Special Rapporteur for Freedom of Expression,” OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 34.

<sup>45</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II. Doc. 86 (June 21, 2018), para. 56, 84; IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, OEA/Ser.L/V/II.Doc.22 (Mar. 15, 2017), para. 160

<sup>46</sup> IACHR, Democratic Institutions, the Rule of Law and Human Rights in Venezuela, OEA/Ser.L/V/II. Doc.209 (Dec. 31, 2017), para. 208; IACHR, 2015 Annual Report, Chapter IV.A, “Use of Force,” para. 65; IACHR, Situation of Human Rights in Guatemala, OEA/Ser.L/V/II. Doc.208/17 (Dec. 31 2017), para. 33.



The Commission has found a requirement of prior notification to be permissible; but not a requirement for authorization.<sup>47</sup> The Commission has focused, additionally, on limiting the discretionary ability of the authority receiving notice, or granting authorization, and focusing on modifications of the time, place, or manner of the assembly to allow it to continue.<sup>48</sup> The Commission has found that where a prior notification or authorization process is too exigent, or poses too many barriers, it violates the right to freedom of assembly.<sup>49</sup>

**9. What sort of limitations may be placed on assemblies as far as their form (e.g. place, manner and time) or their contents (e.g. promotion of violence) is concerned?**

The Commission has permitted a time, place, or manner modification to an assembly as a valid limitation on the freedom of assembly so long as the limitations do not “depend on the content of what is to be expressed in the demonstration, ... serve a public interest, and ... leave open alternative channels of communication.”<sup>50</sup> Any limits placed on assemblies must be “governed by the principles of legality, necessity, and proportionality.”<sup>51</sup> The Commission has stated that any public assemblies “may only be restricted to prevent a serious and imminent threat from materializing, and a future, generic danger would be insufficient” and that there must be an ability to appeal any limitation on an assembly to a different authority.<sup>52</sup>

**11. What are the rules as far as the use of coercive measures against those engaged in assemblies is concerned, also if they turn violent? This includes detention, arrest and the use of force (articles 6, 7 and 9 of the ICCPR). How should the requirements of legality, precaution, necessity and proportionality in the context of the use of force be understood? What is the role of the various forms less-lethal weapons and equipment that are available, and how should they be regulated? ... Can dispersal ever be justified where an assembly is entirely peaceful/non-coercive?**

The Commission has stated that coercive measures should be designed to maintain the right of freedom of assembly and to protect protesters and third parties.<sup>53</sup> Further, any use of force must be necessary and

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<sup>47</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2005, Chapter V. Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly. OEA/Ser.L/V/II.124 Doc. 7 (Feb. 27, 2006) para. 95; IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 (Dec. 31, 2015), para. 129, 286.13

<sup>48</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2005, Chapter V. Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly. OEA/Ser.L/V/II.124 Doc. 7 (Feb. 27, 2006) para. 95. “The Rapporteurship notes that the requirement of prior notification of a demonstration does not diminish the right to freedom of expression or the right to freedom of assembly. ... However, the requirement of prior notification should not become a demand that permission be granted beforehand by an officer with unlimited discretionary authority. In other words, an officer cannot deny a permit because he or she believes it to be likely that a demonstration will endanger peace, security, or public order, without taking into consideration whether the danger to peace, security or public order can be avoided by modifying the original circumstances of the demonstration (place, time, and so on).”

<sup>49</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 (Dec. 31, 2015), para. 129.

<sup>50</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2005, Chapter V. Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly. OEA/Ser.L/V/II.124 Doc. 7 (Feb. 27, 2006), para. 94. The Commission’s TPM restriction was developed from U.S. Supreme Court jurisprudence. *Id.* FN 109.

<sup>51</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2017. OEA/Ser.L/V/II. Doc. 210/17. Dec. 31, 2017, para. 41; IACHR, Situation of Human Rights in Guatemala, OEA/Ser.L/V/II. Doc.208/17 (Dec. 31 2017) para. 330; IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 (Dec. 31, 2015), para. 120.

<sup>52</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 (Dec. 31, 2015), para. 130

<sup>53</sup> IACHR, Situation of Human Rights in Guatemala, OEA/Ser.L/V/II. Doc.208/17 (Dec. 31, 2017), para. 331.

proportionate as “an exception, used only under strictly necessary circumstances”<sup>54</sup> The requirement of legality regarding use of force implies the existence of an applicable regulatory framework.<sup>55</sup> The requirement of necessity for use of force means that there must be no other less harmful response available and that force may only be used where the person is a direct danger.<sup>56</sup> The requirement of proportionality involves the minimization of harm.<sup>57</sup>

The Commission has found that arrest of demonstrators is not permitted except in limited situations where a demonstrator is “interfering with the rights or liberties of others” including through violence or the provocation of violence.<sup>58</sup> Mass, collective, or indiscriminate arrests are not permissible under the American Convention.<sup>59</sup> In *Lopez Lone*, the Court found that detention during a protest violated the right to freedom of assembly.<sup>60</sup>

Regarding less lethal weapons, the Commission finds that they may still have “indiscriminate effects and, in some instances, fatal consequences.”<sup>61</sup> In particular, the Commission has stated that the use of teargas against demonstrators, from close range or from a helicopter, is not necessary and disproportionate.<sup>62</sup>

The Commission says that dispersal of a demonstration is permitted only where “warranted by the duty to protect individuals” and done using “measures that are safest and least harmful to the demonstrators.”<sup>63</sup>

## **12. What are the rights of those who wish to observe and record assemblies and how they are policed, including participants, bystanders and the media?**

On this issue, the IACHR Special Rapporteurship for Freedom of Expression has stated that “[r]egarding journalists and cameramen doing their job in a public demonstration, [it] understands that they should not be bothered, detained, relocated, or made to suffer any other restriction of their rights due to their being engaged in the practice of their profession. Moreover, their work implements should not be confiscated.

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<sup>54</sup> IACHR, Democratic Institutions, the Rule of Law and Human Rights in Venezuela, OEA/Ser.L/V/II. Doc.209 (Dec. 31, 2017), para. 224

<sup>55</sup> IACHR. Annual Report 2015. Chapter IV.A “The Use of Force”, para. 8; Cruz Sánchez et al. v. Peru, Inter-Am. Ct. H.R., Preliminary Objections, Merits, Reparations and Costs, Judgment of Apr. 17, 2015. Ser. C, No. 292, para. 265.

<sup>56</sup> IACHR. Annual Report 2015. Chapter IV.A “The Use of Force”, para. 11; Nadege Dorzema et al. v. Dominican Republic. Inter-Am. Ct. H.R., Merits, Reparations and Costs. Judgment of Oct. 24, 2012. Ser. C No. 251, para. 85.

<sup>57</sup> IACHR. Annual Report 2015. Chapter IV.A “The Use of Force”, para. 12-13; IACHR, Report on Citizen Security and Human Rights, December 31, 2009, para. 119; Landaeta Mejías Brothers et al. v. Venezuela. Inter-Am. Ct. H.R. Preliminary Objections, Merits, Reparations and Costs. Judgment of Aug. 27, 2014. Ser. C No. 281, para. 134, 136.

<sup>58</sup> IACHR. Annual Report 2015. Chapter IV.A “The Use of Force”, para. 99

<sup>59</sup> IACHR. Annual Report 2015. Chapter IV.A “The Use of Force”, para. 121; Bulacio v. Argentina, Inter-Am. Ct. H.R., Merits, Reparations and Costs. Judgment of Sep. 18, 2003. Ser. C. No. 100, para. 137.

<sup>60</sup> Lopez Lone v. Honduras, Inter-Am. Ct. H.R., Judgment of Oct. 5, 2015, Preliminary Objections, Merits, Reparations and Costs, Ser. C, No. 302, paras. 179-180.

<sup>61</sup> IACHR, Democratic Institutions, the Rule of Law and Human Rights in Venezuela, OEA/Ser.L/V/II. Doc.209 (Dec. 31, 2017), para. 225

<sup>62</sup> IACHR, Democratic Institutions, the Rule of Law and Human Rights in Venezuela, OEA/Ser.L/V/II. Doc.209 (Dec. 31, 2017), para. 225.

<sup>63</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2005, Chapter V. Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly. OEA/Ser.L/V/II.124 Doc. 7 (Feb. 27, 2006), para. 41, IACHR. Annual Report 2015. Chapter IV.A “The Use of Force”, para. 67.

To the contrary, any action intended to obstruct their work should be prevented, as long as they do not place the rights of others at risk.’<sup>64</sup>

**16. Is it correct to say that ‘there is no such thing as an unprotected assembly’ because even if the assembly is no longer peaceful, those involved retain their other rights, such as their rights against ill-treatment and the right to life?**

Both the Commission has explicitly recognized that even when a protest or assembly is no longer peaceful, those participating retain their other rights, particularly the right to life and personal integrity.<sup>65</sup>

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<sup>64</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report 2005, Chapter V. Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly. OEA/Ser.L/V/II.124 Doc. 7 (Feb. 27, 2006), para 101; IACHR. Annual Report 2015. Chapter IV.A “The Use of Force”, para. 170; Vélez Restrepo and family v. Colombia. Inter-Am. Ct. H.R., Preliminary Objections, Merits, Reparations and Costs. Judgment of Sep. 3, 2012. Ser. C. No. 248, para. 146.

<sup>65</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II. Doc. 86 (June 21, 2018), para. 66, 115-16; and Women Victims of Sexual Torture in Atenco v. Mexico, Inter-Am. Ct. H.R., Judgment of Nov. 28, 2018, Preliminary Objections, Merits, Reparations and Costs, Ser. C. No. 371, para. 175