

# Guidelines on Freedom of Association and Assembly in Africa





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## Foreword

The Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights (African Commission) were adopted at the Commission's 60th Ordinary Session held in Niamey, Niger, from 8 to 22 May 2017; further to Resolution 319 (LVII) 2015 which mandated the Study Group on Freedom of Association and Assembly to develop the said guidelines, under the supervision of the Special Rapporteur on Human Rights Defenders in Africa.

The guidelines were developed in accordance with the relevant provisions of the African Charter on Human and Peoples' Rights (African Charter), which stipulates under Article 45 (1) (b) that the African Commission is mandated "to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms..."

Through the African Commission's constant interpretation of human rights, the guidelines are aimed at crystallising human rights standards, as they continue to evolve, with the understanding that new challenges may emerge in the course of time. As such, the guidelines serve as a starting point, which will be complemented by new standards.

The rights to freedom of association and assembly are fundamental rights that should underpin all democratic societies in which individuals can freely express their views on all issues concerning their society. In this respect, the African Commission, through its special mechanism on human rights defenders and its Study Group on Freedom of Association and Assembly, undertook to develop this tool in the form of guidelines on the rights to freedom of association and assembly, to be used by the relevant stakeholders.

In addition to the clarifications they provide, the guidelines on the rights to freedom of association and assembly strengthen the obligations set forth in Article 10 of the African Charter on the right to freedom of association and in Article 11 on the right to freedom of assembly.

Indeed, the guidelines were developed through a series of consultations conducted in all the regions of Africa. Following the preparation and drafting process, the guidelines were reviewed and presented to the African Commission for adoption. Considering the current climate and taking into account the new challenges in the area of the right to peaceful demonstration, a comparative reading of the Guidelines on Freedom of Association and Assembly and the Guidelines for the Policing of Assemblies in Africa was conducted, with the participation of the Special Rapporteur on Human Rights Defenders in Africa. We have thus adopted an original approach to provide human rights defenders in Africa with a working and advocacy tool that can be used when the Special Rapporteur encourages States parties to take ownership of the guidelines and take them into account when drafting laws.

The Special Rapporteur expresses her hope that the guidelines will serve as a basis for the drafting of laws that comply with human rights, in particular freedom of association and assembly in Africa.

**Reine Alapini-Gansou**

*Special Rapporteur on Human Rights Defenders in Africa  
Former Chairperson of the African Commission on Human and Peoples' Rights*

# Preamble

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

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

**Recalling** further Resolution 69 (XXXV) 04 on the Protection of Human Rights Defenders in Africa, Resolution 119 (XXXXII) 07 on the Situation of Human Rights Defenders in Africa, and Resolution 196 (L) 11 on Human Rights Defenders in Africa;

**Bearing in mind** Resolution 125 (XXXXII) 07 on the renewal of the mandate of the Special Rapporteur on Human Rights Defenders in Africa, Resolution 151 (XLVI) 09 on the need for the conduct of a study on freedom of association in Africa, Resolution 186 (XLIX) 11 on the appointment of members for a Study Group on Freedom of Association in Africa, Resolution 229 (LII) 12 on the extension of the deadline for the study on freedom of association and extension of the scope of the study to include freedom of peaceful assembly in Africa, Resolution 248 (LIV) 13 on the renewal of the mandate of the Special Rapporteur on Human Rights Defenders in Africa, Resolution 261 (LIV) 13 on the extension of the deadline for the study on Freedom of Association and Assembly in Africa, and Resolution 273 (LV) 14 on the extension of the scope of the mandate of the Special Rapporteur on Human Rights Defenders in Africa to include reprisals against human rights defenders;

**Recalling** that during the 56<sup>th</sup> Ordinary Session, held from 21 April to 7 May 2015 in Banjul, The Gambia, the African Commission on Human and Peoples' Rights launched the Report of the Study Group on Freedom of Association and Assembly in Africa;

**Recalling** Resolution 319 (LVII) 15 on the drafting of Guidelines on Freedom of Association and Assembly in Africa;

**Noting** Articles 10 and 11 of the African Charter, guaranteeing the rights to freedom of association and assembly, and **noting** further that the rights to freedom of association and assembly are inextricably intertwined with other rights;

**Noting** further Articles 60 and 61 the African Charter, mandating the Commission to draw inspiration from regional and international instruments and practice on human and peoples' rights;

**Recalling** the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the African Charter on the Rights and Welfare of the Child and the African Charter on Democracy, Elections and Governance,

**Recalling** further the jurisprudence of the Commission pertaining to the rights to freedom of association and assembly;

**Recalling** further the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa;

**Noting** that the rights to freedom of association and assembly are fundamental and protected at the national, regional and international levels;

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

**Having regard** to various political, technological and security developments impacting on the enjoyment of the rights;

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

**Concerned** also by the practice in some states of hampering the participation of civil society in the work of regional and international bodies and by the 'chilling effect' of reprisals on civil society actors, and **stressing** the obligation on states to provide full protection to those who seek to participate in the work of international bodies;

**Concerned** further that restrictions on the rights to freedom of association and assembly limit the potential for a free public sphere and a free and open democratic society, and that restrictions on an independent civil society hinder the operations of human rights defenders and the advancement of human rights;

**Conscious** of the need to provide guidance to states on the measures necessary in order to ensure respect for and the protection and fulfillment of human rights;

The African Commission on Human and Peoples' Rights solemnly **adopts** these Guidelines on Freedom of Association and Assembly in Africa.

# Fundamental Principles

This section presents ten fundamental principles, which inform the more concrete provisions detailed below. These fundamental principles should be borne in mind throughout when contemplating and interpreting the rights in question and their specification as laid out in these guidelines.

- i. **Presumption in favor of the right:** The presumption shall be in favor of the exercise of the rights to freedom of association and assembly.
- ii. **Enabling framework:** Any legal framework put in place or other steps taken relative to the rights to freedom of association and assembly shall have the primary purpose of enabling the exercise of the rights.
- iii. **Political and social participation of an independent civil society:** The independence of civil society and the public sphere shall be ensured, and the participation of individuals in the political, social and cultural life of their communities shall be enabled.
- iv. **Human rights compliance:** All constitutional, legislative, administrative and other measures shall comply with the full extent of regional and international human rights obligations, deriving from the rights to freedom of association and assembly and all other guaranteed rights.
- v. **Impartiality of governance agencies:** Authorities with governance oversight shall conduct their work impartially and fairly.
- vi. **Simple, transparent procedures:** Procedures relating to the governance of associations and assemblies shall be clear, simple and transparent.
- vii. **Reasoned decisions, judicial review:** State decisions shall be clearly and transparently laid out, with any adverse decisions defended by written argumentation on the basis of law and challengeable in independent courts of law.
- viii. **Limited sanctions:** Sanctions imposed by states in the context of associations and assemblies shall be strictly proportionate to the gravity of the harm in question and applied only as a matter of last resort and to the least extent necessary.
- ix. **The right to a remedy:** The right to a remedy shall be protected in cases of violation of the rights to association and assembly.
- x. **More protective standard:** If conflict between provisions of these guidelines and other international and regional human rights standards arise, the more protective provision takes precedence.

# Definition

1. An association is an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. Such an association may be formal (de jure) or informal (de facto).<sup>1</sup>
  - a. A formal (de jure) association is an association that has legal personality.
  - b. An informal (de facto) association is an association that does not have legal personality, but that nonetheless has some institutional form or structure.<sup>2</sup>
2. Civil society consists of formal and informal associations independent of the state through which citizens may pursue common purposes, participate in the political, social and cultural life of their societies, and be involved in all matters pertaining to public policy and public affairs.
3. Assembly refers to an act of intentionally gathering, in private or in public, for an expressive purpose and for an extended duration. The right to assembly may be exercised in a number of ways, including through demonstrations, protests, meetings, processions, rallies, sit-ins, and funerals, through the use of online platforms, or in any other way people choose.

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<sup>1</sup> See Organisation for Security and Cooperation in Europe, Guidelines on Freedom of Association (2015), para. 7.

<sup>2</sup> See id.

# Part 1: Freedom of Association

## I. Legal Framework

4. The right to freedom of association is guaranteed under Article 10 of the African Charter, Article 8 of the African Charter on the Rights and Welfare of the Child, and Articles 12(3), 27(2) and 28 of the African Charter on Democracy, Elections and Governance.
5. The right to freedom of association is also guaranteed under Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights, Article 15 of the International Convention on the Rights of the Child, Article 7(c) of the Convention on the Elimination of All Forms of Discrimination Against Women, Article 26 and 40 of the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, Article 15 of the 1951 Convention Relating to the Status of Refugees, Article 24(7) of the International Convention for the Protection of All Persons from Enforced Disappearance, and Article 29 of the Convention on the Rights of Persons with Disabilities.
6. National constitutions shall guarantee the right to freedom of association, which shall be understood in a broad manner consistent with regional and international human rights law.<sup>3</sup>
7. National legislation on freedom of association, where necessary, shall be drafted with the aim of facilitating and encouraging the establishment of associations and promoting their ability to pursue their objectives. Such legislation shall be drafted and amended on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.
8. The right to freedom of association is a right enjoyed both by individuals and by groups.<sup>4</sup> The choice to exercise the right to freedom of association shall always be voluntary; individuals shall not be compelled to join associations, and shall always be free to leave them.<sup>5</sup> Those founding and belonging to an association may choose whom to admit as members, subject to the prohibition on discrimination.

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<sup>3</sup> Where a constitution states that the essence of a right shall be defined by law, this should in no way be interpreted to allow unreasonable limitation of the right.

<sup>4</sup> See Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), para. 118.

<sup>5</sup> See Universal Declaration of Human Rights, Art 20(2); Nkpa v. Nkume, Nigerian Court of Appeal (2000), para. 51.

## II. Legal Personality

### Formation

9. Every person has the right to establish an association together with another, free from limitations violating the right to equality and the guarantee of nondiscrimination.<sup>6</sup> No more than two people shall be required in order to found an association.
10. The fact of past criminal conviction alone shall not prevent an individual from founding an association.<sup>7</sup>

### Legal Personality of Associations

11. States shall not compel associations to register in order to be allowed to exist and to operate freely.<sup>8</sup> Informal (de facto) associations shall not be punished or criminalized under the law or in practice on the basis of their lack of formal (de jure) status.
12. Associations shall have the right to acquire legal personality and consequent benefits.<sup>9</sup>

### Notification Regime

13. Registration shall be governed by a notification rather than an authorization regime, such that legal status is presumed upon receipt of notification.<sup>10</sup> Registration procedures shall be simple, clear, non-discriminatory and non-burdensome, without discretionary components. Should the law authorize the registration authorities to reject applications, it must do so on the basis of a limited

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<sup>6</sup> Including inter alia children and non-nationals. See Article 15 of the Convention on the Rights of the Child and Article 8 of the African Charter on the Rights and Welfare of the Child. Children's right to found associations shall be interpreted in accordance with their evolving capacities and the principle of the best interests of the child, in accordance with the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The two categories are mentioned specifically here due to the fact many national laws specifically exclude such categories of persons.

<sup>7</sup> Past criminal conviction shall only potentially limit an individual's ability to found an association where the nature of that conviction directly raises concern relative to the true purpose of the association. Direct reason for concern would be raised, for instance, where an individual seeking to set up an association has previously been convicted of fraud and there is well-founded reason to believe the association is not being set up in good faith.

<sup>8</sup> Ideally, legislation shall explicitly recognize the right to exist of informal associations.

<sup>9</sup> Including the ability to have bank accounts and to initiate legal proceedings in their name.

<sup>10</sup> See Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), paras. 118 for the stipulation that the right to freedom of association "comprises the right to form and join associations freely." For overturning of an illegitimate refusal of registration, see Attorney General of Botswana v. Thuto Rammoge and others, Botswana Court of Appeal (Mar. 16, 2016).

number of clear legal grounds, in compliance with regional and international human rights law.<sup>11</sup>

14. States may require that associations include certain basic information in their initial notifications. Information required may include the name of the association, names of founding members, physical address (if any), contact information, and planned aims and activities of the association.<sup>12</sup>
15. The law shall not limit the names of associations, unless they are misleading, for instance due to resembling the names of other associations, or where they violate the prohibition of hate speech as defined by regional and international human rights law.<sup>13</sup>
16. Associations shall be provided with official documents confirming their submission of notification upon such submission. Should the authorities fail to provide such documents, mailing records and copies of the notification form submitted shall suffice as evidence of submission of notification.
17. Associations shall not be required to register more than once or to renew their registration.
18. A registration fee may be imposed to cover administration fees, provided that this fee is modest and does not have the effect of deterring associations from registering in practice.<sup>14</sup>
19. The same registration procedure shall be employed throughout the country.<sup>15</sup>
20. Foreign and international associations may establish branches in accordance with procedures duly laid down in national law. Any limitations imposed by states shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society, as these principles are understood in the light of regional and international human rights law.

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11 For more commentary pertaining to such an issue, see Organisation for Security and Cooperation in Europe, Guidelines on Freedom of Association (2015), para. 154.

12 Should the information initially submitted be incomplete, the administrative authorities should inform the association and request the additional information.

13 On the definition of this term, see Office of the High Commissioner for Human Rights, Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Oct. 5, 2012).

14 Where an association does not possess sufficient financial means, easement of fees is appropriate.

15 This clause is aimed at preventing limitations on associations within certain territories and regions of countries.

## Administrative Authority Responsible for Registering Associations

21. The body that registers associations must perform its functions impartially and fairly.<sup>16</sup> Only one body should be tasked with registering associations. The process through which individuals are appointed to the body shall be transparent.
22. The administrative authority in charge of registration shall make sure that the procedure and its decisions are accessible and transparent.<sup>17</sup>

## III. Purposes and Activities

23. Associations shall determine their purposes and activities freely.
24. Any limitations imposed by states shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society, as these principles are understood in the light of regional and international human rights law.<sup>18</sup>
25. Associations shall be able to engage in the political, social and cultural life of their societies, and to be involved in all matters pertaining to public policy and public affairs, including, *inter alia*, human rights, democratic governance, and economic affairs, at the national, regional and international levels.
26. States shall establish mechanisms that enable associations to participate in the formulation of law and policy. Such mechanisms shall aim to foster broad and inclusive processes, dialogue and meaningful consultation<sup>19</sup>

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<sup>16</sup> In accordance with best practice, the body should include representatives of civil society

<sup>17</sup> In no cases shall an association be prevented from registering through being required to submit documents it can only obtain from the authorities, where the authorities do not promptly and effectively supply such documents.

The authorities should facilitate the process of registration, with special concern relative to those who wish to form associations representing marginalized communities, by providing aid to those who require it; by translating registration procedures into local languages; by creating a decentralized system of offices capable of receiving registration – operated, for instance, through local government centers – throughout the country; and by enabling online registration. In addition, the administrative authority should maintain an easily accessible database of registered associations, in print and online form, including information on numbers of accepted and rejected applications, as well as the reasons proffered for any rejections.

<sup>18</sup> See Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), paras. 116-9.

<sup>19</sup> Participation shall be enabled at the local, regional, national and international levels. Participation opportunities shall include the ability for associations to submit inputs concerning draft laws or proposed changes to laws or constitutions, policies and administrative practices, where such are considered. Associations shall always actively be consulted on potential amendments affecting the legal and regulatory framework governing associations in particular, prior to the enactment of the changes. Consultations shall be inclusive, reflecting the diversity of associations, populations and points of view in a society, including the perspectives of associations with points of view opposing as well as supporting government proposals. Consultations shall be enabled through timely and detailed access to the relevant official information, with sufficient time allowed for associations to formulate and

27. Associations shall be able to comment publicly and privately on reports submitted by states to national human rights institutions and regional and international human rights bodies, including prior to the submission of the reports in question.<sup>20</sup>
28. The right to freedom of association protects, *inter alia*, expression; criticism of state action; advancement of the rights of discriminated-against, marginalized and socially vulnerable communities, including the rights of women and children; and all other conduct permissible in the light of regional and international human rights law.<sup>21</sup>
29. States shall respect, in law and practice, the right of associations to carry out their activities, including those denoted above, without threats, harassment, interference, intimidation or reprisals of any kind.<sup>22</sup>
30. States shall protect associations, including their principal and most visible members, from threats, harassment, interference, intimidation or reprisals by third parties and non-state actors.

## IV. Oversight

### Oversight Bodies

31. Matters relating to the oversight of associations shall be overseen, where necessary, by a single body that conducts its functions impartially and fairly.<sup>23</sup> Such a body shall have oversight only in relation to essential, minimum internal governance

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express their views and participate in a meaningful, substantive manner.

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

<sup>20</sup> Comment may, *inter alia*, take the form of press release, public report, shadow report or private comments submitted to the organization in question.

<sup>21</sup> See, e.g., *International Pen and Others (on behalf of Ken Saro-Wira) v. Nigeria*, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998), paras. 107-10 (finding a violation of the right to freedom of association where the government took action against an association due to disapproval of its actions). See also *Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan*, Comm. No. 379/09 (2014), paras. 116-9.

<sup>22</sup> On state harassment of individuals and associations due to their adoption of positions the authorities disapproved of, see *Aminu v. Nigeria*, Comm. No. 205/97 (2000), paras. 22-3; *Huri-Laws v. Nigeria*, Comm. No. 225/98 (2000), paras. 47-9; *Ouko v. Kenya*, Comm. No. 232/99 (2000), paras. 29-30; *Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan*, Comm. No. 379/09 (2014), paras. 116-9.

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

<sup>23</sup> Civil society actors may be included in this body as a means to promote transparency and fairness.

structures and standards.<sup>24</sup> The powers of such a body shall be clearly delimited by law in accordance with regional and international human rights standards.

32. Civil society actors should work together to establish independent self-governance standards, which should aim for openness, transparency and democratic structures.

### **Oversight Powers**

33. The oversight powers of the authorities shall be carefully delimited, so as not to infringe on the right to freedom of association.
  - a. In particular, associations shall not be required to transmit detailed information such as the minutes of their meetings, lists of their members, or personal information of their members to the authorities.<sup>25</sup>
  - b. Neither law nor practice shall require the attendance of state agents at meetings of associations.
34. State inspections shall not aim at verifying the compliance of associations with their own internal procedures.<sup>26</sup>
  - a. Inspections of associations by oversight bodies shall only be permitted following a judicial order in which clear legal and factual grounds justifying the need for inspection are presented.
  - b. Inspections shall only take place where there is a well-founded evidence-based allegation of a serious legal violation.
  - c. Regulations on inspections shall clearly define the powers of inspecting officers, ensure respect for privacy, and provide redress for any violations committed through the inspection process.
  - d. Where associations are required to provide documents prior to or during an inspection, the number of documents required should be defined and reasonable, and associations should be given sufficient time to prepare them

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<sup>24</sup> The core matter falling under such a category is a prohibition on the distribution of profits.

<sup>25</sup> A list of the names of the founding members of an association may form part of the documents necessary in the notification procedure, however. For more commentary pertaining to such an issue, see Organisation for Security and Cooperation in Europe, Guidelines on Freedom of Association (2015), para. 167.

<sup>26</sup> As it is for associations to determine these matters internally. For more commentary pertaining to such an issue, see Organisation for Security and Cooperation in Europe, Guidelines on Freedom of Association (2015), para. 178.

- e. In no cases shall inspections be utilized in order to harass or intimidate associations of which political authorities disapprove.
  - f. Where an unjustified inspection occurs, the association in question shall have the right to a remedy, and sanctions shall be levied against the responsible parties in a court of law.
35. Authorities shall respect the right to privacy of associations and shall not subject them to undue surveillance.<sup>27</sup> Surveillance may only be pursued in cases where reasonable suspicion of an infraction of the law has led to a court-issued warrant authorizing such. Associations and individuals who have their rights to freedom of association and privacy violated through illegitimate surveillance shall be afforded appropriate redress.

### **Internal Governance Structures**

36. Associations shall be self-governing and free to determine their internal management structures, rules for selecting governing officers, internal accountability mechanisms and other internal governance matters.
- a. Law or regulation shall not dictate the internal organization of associations, beyond basic provisions providing that non-discriminatory and rights-respecting principles be followed.
  - b. Associations shall not be required to obtain permission from the authorities to change their internal management structure or other elements of their internal rules.
  - c. Public authorities shall not interfere with associations' choices of managing officers, unless such persons are barred by national law from holding the positions in question on the basis of legitimate grounds as interpreted by regional and international human rights law.<sup>28</sup>
  - d. The law shall not require that physical meetings be held.<sup>29</sup>

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<sup>27</sup> For more details, see The Global Principles on National Security and the Rights to Information (Tshwane Principles), Article 10(E); Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, Part 11.

<sup>28</sup> Such as, of example, where individuals previously convicted of fraud are barred from holding financial management positions.

The law may require the identification of governing officers.

<sup>29</sup> Both because this is an unnecessary requirement and given the potentials offered by communication technology.

## V. Financing

### Acquisition of Funding

37. The law shall clearly state that associations have the right to seek, receive and use funds freely in compliance with not-for-profit aims.
- a. Associations shall be free to conduct fundraising through various means, including engaging in economic activities designed to support the aims of the organization.
  - b. Associations shall be free to acquire resources in the form of cash as well as property, goods, services, investments, and other assets.
38. Associations shall be able to seek and receive funds from local private sources, the national state, foreign states, international organizations, transnational donors and other external entities.<sup>30</sup> States shall not require associations to obtain authorization prior to receipt of funding.
39. Associations shall be subject to the same general laws governing money laundering, fraud, corruption, trafficking and similar offenses as individuals and for-profit enterprises.<sup>31</sup>
40. Income generated shall not be distributed as profits to the members of not-for-profit associations. Associations shall however be able to use their income to fund staff and reimburse expenses pertaining to the activities of the association and for purposes of sustainability.<sup>32</sup>

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30 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc. A/HRC/23/39 (Apr. 24, 2013), Section 20; Organisation for Security and Cooperation in Europe, Guidelines on Freedom of Association (2015), paras. 218, 223.

In particular, states should not prohibit funding solely on the basis that it is foreign, require that funds pass through a state-run entity before being received, impose excessive reporting requirements relative to foreign funding, ban foreign-funded associations from otherwise legitimate activities, stigmatize or delegitimize foreign-funded associations, initiate aggressive auditing campaigns, or impose criminal or other excessive penalties on the basis of receipt of foreign-funding as such.

31 This article is key, highlighting that, as in other areas, where there are criminality and law enforcement concerns, the appropriate laws and enforcement procedures will apply. Of fundamental importance however is that such issues be dealt with in the appropriate context, through legal approaches of general application, and that particular legal regimes, designed with a presumption of the criminality of civil society and the aim of restricting its work, not be carved out. Measures taken to fulfill such aims shall be clearly laid out by law, necessary and proportionate, shall be carefully targeted and the least intrusive means to fulfill such objectives, shall not be overly burdensome, shall be impartially applied and shall not be used as cover for illegitimate purposes, such as to prevent funding to associations of which the authorities disapprove. Funding for human rights organizations in particular shall not be targeted under such pretexts.

32 Regulations preventing excessive salaries, which may be a means of bypassing the prohibition on engagement in for-profit activities, are however reasonable.

## Public Support

41. States should provide tax benefits, and public support where possible, to not-for-profit associations.<sup>33</sup>
42. States that provide public support to associations, including in the form of tax benefits, shall ensure that funds and benefits are distributed in an impartial, non-partisan and transparent manner, on the basis of clear and objective criteria, and that the granting of funds or benefits is not used as a means to undermine the independence of civil society sphere.
43. Public support shall promote the equal ability to participate of all groups and individuals in society through support for associations working with and for marginalized, socially-vulnerable and discriminated-against communities.<sup>34</sup>
44. Any body vested with the power to determine public support shall conduct its functions impartially and fairly. The procedures governing the operations of that body shall be clearly laid out by law.
45. All forms of public support shall be entirely transparent.
  - a. Such transparency includes clear publication of the relevant criteria and decision-making process, the amounts of funds awarded, their recipients and the grounds upon which funding decisions were made.<sup>35</sup>
  - b. Additional reporting requirements may be imposed in order to enable effective use and reporting of state funding. Such reporting requirements shall not be overly burdensome in relationship to the quantum of funding available, and shall be the same across organizations receiving similar quantities of funding. Support provided shall cover additional costs imposed by such requirements.
  - c. The levels of public funding available, both in total and to particular organizations, shall be clearly stipulated in advance.
46. Associations shall be able to approach the courts for review of a denial of funding if they believe the decision was taken unfairly.

33 Public support includes not only direct financial support, but rather all forms of support, including material support, in-kind benefits, exemptions, and other forms of non-direct support.

34 Such groups include organizations involved in human rights protection, policy-making, monitoring and advocacy, the provision of social services, and other aims and activities.

35 Steps should be taken in particular to ensure all potentially interested organizations are made aware of the relevant criteria and any steps necessary to become eligible for such funding. Any steps necessary to become eligible for such funding should not be overly burdensome in relationship to the quantum of funding available.

## Reporting

47. Reporting requirements shall be constructed on the basis of the presumed lawfulness of associations and their activities, and shall not interfere with the internal management or activities of associations.
48. Where reporting is required, reporting requirements shall be simple and shall not be overly burdensome.<sup>36</sup>
  - a. Reporting requirements shall be entirely laid out in a single piece of legislation, and reports shall only be required to a single state body.<sup>37</sup>
  - b. Any reporting requirements shall not require extensive details, but shall rather be aimed at ensuring financial propriety.<sup>38</sup>
  - c. The rights to confidentiality and privacy of associations, their members and those on whose behalf they work shall be respected throughout the reporting process.
  - d. Reporting requirements shall be proportionate to the size and scope of the organization and shall be facilitated to the extent possible, *inter alia*, through the provision of templates, information technology tools, and other measures.
  - e. Reporting requirements shall not be used as a way to limit or target associations, including, *inter alia*, by utilizing the information therein to publicly condemn associations or by attempting to sanction or punish associations merely for altering their activities in relationship to the objectives they originally set out.
49. In no circumstances shall an audit of a not-for-profit association be more burdensome than an audit of a for-profit association of comparable means, nor shall an audit be conducted to harass an association. Neither reporting nor auditing requirements shall be so burdensome as to significantly diminish the substantive activities of a not-for-profit association.

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<sup>36</sup> In no circumstances shall not-for-profit associations be subjected to greater reporting requirements than for-profit entities.

Yearly reporting is generally adequate.

<sup>37</sup> Such a body shall be responsible for distributing the information to other concerned authorities, as appropriate.

<sup>38</sup> Including, for instance, through requiring basic description of association projects and activities as necessary to account for the use of funds.

## VI. Federations and Cooperation

50. Associations shall be free to create national federations with legal status through procedures substantively equivalent to those through which associations are created. Associations shall also be free to create informal (de facto) national federations.
51. Associations and national federations shall be able to join international federations, and international federations shall be able to obtain legal status in particular countries through procedures substantively equivalent to those through which international associations may obtain such status.
52. The decision to form or not to form federations shall be made freely by civil society actors. The state shall not stipulate by law the existence of particular or exclusive regional or national federations of associations.<sup>39</sup>
53. The law shall not stipulate mandatory state membership of particular federations.<sup>40</sup>
54. States and officials shall refrain from interfering in domestic and international civil society space through the creation, operation or provision of covert support for non-independent civil society organizations.

## VII. Sanctions and Remedies

55. States shall not impose criminal sanctions in the context of laws governing not-for-profit associations.<sup>41</sup> All criminal sanctions shall be specified within the penal code and not elsewhere. Civil society shall not be governed by provisions of criminal law different from the generally applicable provisions of the penal code.<sup>42</sup>
56. Sanctions shall be applied only in narrow and lawfully prescribed circumstances, shall be strictly proportionate to the gravity of the misconduct in question, and shall only be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process.

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

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

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

42 Relating, for example, to fraud, embezzlement and similar offenses.

57. Liability shall not be imputed from associations to individuals or *vice versa*.<sup>43</sup> Offenses committed by particular members of associations shall not be taken as grounds to penalize the association itself, where the official decision-making structure of the association was not employed to pursue those offenses. Similarly, offenses committed by an association, for instance through decisions of its officers, shall not be imputed to members of the association who did not take part in the offenses in question.
58. Suspension or dissolution of an association by the state may only be applied where there has been a serious violation of national law, in compliance with regional and international human rights law and as a matter of last resort.<sup>44</sup> Suspension may only be taken following court order, and dissolution only following a full judicial procedure and the exhaustion of all available appeal mechanisms. Such judgments shall be made publicly available and shall be determined on the basis of clear legal criteria in accordance with regional and international human rights law.
59. Sanctions shall not be disproportionate or aimed at tightly controlling or penalizing associations without strong grounds.
- a. In no cases shall associations be subject to sanctions on the basis that their activities breach their internal regulations, where the activities in question are otherwise lawful.
  - b. Monetary penalties shall be avoided to the extent possible. Where associations have failed to comply with a particular state requirement, the remedy shall be compliance with that requirement. Prior to the imposition of sanctions, a warning shall be issued and a reasonable period of time in which to comply with the regulations in question provided, where circumstances so allow.
60. Commencement of legal appeals shall suspend the enforcement of sanctions until the appeals process has run.<sup>45</sup>
61. The burden of proof relative to sanctions against associations shall always be on the state.

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

44 The requisite level of gravity is only reached in cases involving the pursuit of illegitimate purposes, such as for example where the association in question aims at large-scale, coordinated intimidation of members of the general population, for instance on the basis of a racially-motivated position.

45 Where necessary, injunctions may be applied however.

62. Where the right to association has been infringed, the association as well as its members shall have due access to a remedy.
  - a. In addition to restitution remedying the specific harms inflicted, associations shall have the right to compensation for any and all damages that may have occurred.
  - b. Where the authorities pursue warrantless sanctions, or have pursued sanctions with the aim of harassing particular associations, those responsible for prosecuting the cases in question shall be held liable for violating the right to freedom of association.
  - c. The right to a remedy also requires other measures, such as satisfaction and guarantees of non-repetition, as and where appropriate.

## Part 2: Freedom of Assembly

### I. Legal Framework

63. The right to freedom of assembly is guaranteed under Article 11 of the African Charter and Article 8 of the African Charter on the Rights and Welfare of the Child.
64. The right to freedom of assembly is also guaranteed under Article 20(1) of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights, and Article 15 of the International Convention on the Rights of the Child.
65. National constitutions shall guarantee the right to freedom of assembly, which shall be understood in a broad manner consistent with regional and international human rights law.<sup>46</sup>
66. Where States enact laws on freedom of assembly, those laws shall aim primarily at the facilitation of the enjoyment of the right.<sup>47</sup> Legislation and regulations on assemblies shall be drafted and amended on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.
67. The right to freedom of assembly applies to all individuals, groups, peoples, unregistered and registered associations, and others.<sup>48</sup>
68. Everyone has the right to assemble freely with others. No one shall be compelled to participate in an assembly.
69. The right to freedom of assembly applies to meetings on private as well as public property.<sup>49</sup>

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

47 States must also guarantee the protection of the rights of others, as detailed below. As per Article 11 of the African Charter, the exercise of the right to freedom of assembly may “be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.” While laws on assembly will necessarily balance the various interests involved, the primary purpose of the law should be to enable the exercise of the right – and not to limit it, as is often seen in practice.

Regulating freedom of assembly primarily through the penal code is particularly injurious to the enjoyment of the right, and a clear violation.

48 Including but not limited to children, stateless persons, refugees, foreign nationals, asylum-seekers, migrants and temporary visitors, in accordance with regional and international human rights law.

49 Where public space is limited, or where public spaces are privatized (as for example in the case of a shopping center), the availability of suitable and effective spaces for public assemblies shall be looked into in determining whether or not the right to assembly might be understood to allow public assembly in such spaces.

70. The right to freedom of assembly extends to peaceful assembly. An assembly should be deemed peaceful if its organizers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful.
- a. 'Peaceful' shall be interpreted to include conduct that annoys or gives offence as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties.
  - b. Isolated acts of violence do not render an assembly as a whole non-peaceful.

## **II. Notification Regime**

71. Participating in and organizing assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state. A system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens.<sup>50</sup>
- a. A notification regime requires that the presumption is always in favor of holding assemblies, and that assemblies not be automatically penalized, through dispersal or sanction, due to failure to notify, subject to the provisions further detailed below.
  - b. Lack of notification shall not be understood to make an assembly illegal.
72. Notification procedures shall be nonburdensome.
- a. A notification regime shall not stipulate that notifications be required too far in advance; rather, any notice period shall be as short as possible. Notification may be sought far enough in advance for an exchange of views as to any possible conditions, and for the relevant authorities to prepare.<sup>51</sup>
  - b. An appropriately simple procedure would involve the filling in of a clear and concise form, available and submittable online and elsewhere, requesting information as to the date, time, location and/or itinerary of the assembly, and the name, address and contact details of principle organizer(s).

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<sup>50</sup> See also *Inspector-General of Police v. All Nigeria Peoples Party and others*, Nigeria Court of Appeal (2007), paras. 16, 23, 25; *New Patriotic Party v. Inspector General of Police*, Ghana Supreme Court (2000), paras. 26, 38-39, 48, 54-5; *Amnesty International and Others v. Sudan*, Comm. Nos. 48/90, 50/91, 52/91 and 89/93 (1999), paras. 81-82 (the Commission here observes moreover that the right to freedom of assembly derives in practice from the right to association; the opposite is clearly the case as well).

<sup>51</sup> In particular, the notice period shall not be more than 5 days; ideally, 48 hours.

- c. Procedures shall be flexible in instances of late notification or submission of incomplete information, with a view to facilitating the conduct of assemblies.
  - d. Notification shall be free of charge.
73. A failure to respond by the authorities shall be taken as acknowledgement that the assembly may go ahead along the lines proposed.
74. Should the authorities receive notification from multiple groups aimed at holding assemblies in the same space at the same time, efforts shall be made to facilitate multiple concurrent assemblies. Where this is impossible, an impartial and reasonable means shall be found to allocate the space.<sup>52</sup>
75. No notification need be submitted for small assemblies, assemblies unlikely to generate disturbance or spontaneous assemblies. Spontaneous assemblies include assemblies that occur as immediate reactions to events, and planned assemblies that necessarily occur within a tighter deadline than that required relative to notification.<sup>53</sup>
76. A single authority shall be designated as the entity responsible for receiving notifications.<sup>54</sup> The designated authority shall be impartial. Upon receipt of notifications, the authority in question shall be responsible for communicating with other concerning agencies.
77. The authority in question shall have a membership broadly representative of the diversity in society. It shall make the relevant procedures, including decision-making procedures, as clear, transparent and readily available as possible.<sup>55</sup> It shall have a procedure for receiving information from individuals who believe their rights will be negatively affected by particular assemblies.

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

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

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

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

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

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

78. All authorities involved in administering assemblies shall be adequately trained in human rights law and aware that their primary task is to facilitate peaceful assemblies.
79. The operations of the authority in question should be subject to oversight and monitoring by an independent authority with a rights-advancement mandate, such as an ombudsman or a national human rights institution.

### **III. Scope of Limitations**

#### **Freedom of Expression**

77. States shall fully respect in law and practice the right to freedom of expression through assembly.<sup>56</sup> States shall not discriminate among assemblies based on the expression involved.
78. The expression aimed at in and through assemblies is protected by the right to freedom of expression, and includes expression that may give offense or be provocative.<sup>57</sup> Hate speech and the incitement of violence are not protected and shall be prohibited.<sup>58</sup>
79. Speech addressing matters of public concern, public interest or political or policy affairs, including criticism of the state or state officials, including as exercised in the context of an assembly, is given maximum protection under the right to freedom of expression.<sup>59</sup>
80. The state shall not discriminate against assemblies on the basis of other illegitimate grounds, including sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, migration status, property, socio-economic status, birth, disability, age, sexual orientation or gender identity.<sup>60</sup>

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<sup>56</sup> See, e.g., Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt, Comm. No. 323/06 (2011), paras. 239-256.

<sup>57</sup> See International Pen and Others (on behalf of Ken Saro-Wira) v. Nigeria, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998), para. 110.

<sup>58</sup> For more on the standards on hate speech in international law, see the Office of the High Commissioner for Human Rights, Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012). Resort to hate speech by particular individuals may be appropriately dealt with, where there is no imminent threat of violence, by removal of the person in question, where possible and necessary, and by charges brought against them after the event.

<sup>59</sup> See Kenneth Good v. Botswana, Comm. No. 313 (2010), para. 198; Declaration of Principles on Freedom of Expression in Africa, Article XII; Konate v. Burkina Faso, Af. Ct. H.P.R., App. No. 004/2013 (Dec. 5, 2014); Organisation for Security and Cooperation in Europe, Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression (2013).

<sup>60</sup> Children's right to organize assemblies applies with due regard to their evolving capacities. Discriminatory impact is prohibited along with direct discrimination.

81. The right to freedom of expression in the context of assemblies protects the manner in which assemblies are conducted as well as the paraphernalia used, including flags, masks, symbols, banners, posters and other objects as well as their content.<sup>61</sup> Such symbols may be restricted where they are intrinsically and exclusively associated with acts of hate speech however.
82. The actions of assemblies shall be reported freely,<sup>62</sup> impartially and without discrimination in the media of a country. The authorities should recognize and respect the right of assembly monitors to observe the manner in which the assembly is policed.

### **Blanket Bans**

83. The blanket application of restrictions, including the banning of assemblies at certain times of day or in particular locations, shall be permitted only as a measure of last resort, where the ban in question complies with the principle of proportionality.<sup>63</sup> The holding of assemblies in public areas in the proximity of residential areas, as well as the holding of nighttime assemblies, shall be handled on a case-by-case basis, rather than prohibited as such.<sup>64</sup>
84. States shall impose no external limitations that unreasonably restrict the right to freedom of peaceful assembly, such as unreasonable limitations on freedom of movement,<sup>65</sup> including transnational movement.

### **Proportionality**

85. Any limitations imposed shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society, as these principles are understood in the light of regional and international human rights law.<sup>66</sup> The law shall not allow assemblies to be limited based on overly broad or vague grounds.
86. Assembly shall be recognized as a right, and its exercise recognized as of no less value than other uses of public space, including commercial activity and the free flow of traffic.

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61 While masks are generally protected, wearing a mask for the purpose of engaging in behavior recognized as unlawful under international human rights standards may be treated as an aggravating factor.

62 Relative to which see Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt, Comm. No. 323/06 (2011), paras. 239-256.

63 See, relating to this issue, Malawi Law Society and Others v. President and others, Malawi High Court (2002), para 30.

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

65 On which see Law Offices of Ghazi Suleiman v. Sudan, Comm. No. 228/99 (2003).

66 In particular, as per Article 11 of the African Charter, the exercise of the right to freedom of assembly may "be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others."

87. Assemblies may be held in any public space.<sup>67</sup> Urban planning shall take account of the need to ensure the right to freedom of assembly, and barriers designed to prevent the effective exercise of the right, including in symbolically important locations, shall not be constructed. Conduct of an assembly will often temporarily hinder, impede or obstruct the activities of third parties, and may have economic consequences; the assembly shall not be dispersed or prevented on such grounds.
88. The temporal component of assemblies shall always be assessed with regard to the need to ensure the right to freedom of assembly and the hardship actually imposed on others. The fact that assemblies are defined as ‘temporary’ does not mean that they may be limited to any particular timelines.<sup>68</sup>

## Conditions

89. Any conditions contemplated shall be communicated promptly in writing to the organizers of the event, along with an explanation of the rationale for the conditions.
- a. The law shall set out a clear procedure through which, prior to the imposition of such conditions, the authorities shall reach out to assembly organizers with their concerns in such a manner as to facilitate the sharing of information and the production of a mutually positive and agreed approach. Organizers shall not be compelled or coerced during this process.
- Where time allows, a procedure of administrative review shall be available in cases of conflict.
- b. Prompt recourse to an independent court shall be available to assembly organizers to challenge the decision of the authorities should they wish to do so.<sup>69</sup>
90. Authorities shall always seek to facilitate assemblies at the organizers’ preferred location at their preferred date and time.
- a. When imposing limitations on location, time or date, the authorities shall propose a suitable alternative time, in which context the message the assembly seeks to convey is still capable of being effectively communicated to those to whom it is directed.

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<sup>67</sup> Including public parks and squares, streets or paths of any size and intended for any form of transit, and publicly-owned buildings including auditoriums, stadiums and universities.

<sup>68</sup> For example, the erection of protest camps or other non-permanent constructions must not be prohibited.

<sup>69</sup> See, e.g., *New Patriotic Party v. Inspector General of Police*, Ghana Supreme Court (2000), paras. 38, 48.

- b. When imposing restrictions, the authorities shall facilitate the ability of an assembly to take place within sight and sound of its target audience.<sup>70</sup>
  - c. Physical security installations around politically and symbolically important locations may violate the right to freedom of assembly in this context where the security gain is outweighed by the extent to which the barriers prevent assemblies from taking place in appropriate locations.
91. Any conditions imposed shall relate closely to the particular concerns raised and be narrowly tailored.
- a. Conditions may only be imposed where they promote a substantial interest that would not be achieved in the absence of the restriction.
  - b. The routine application of conditions, without individuated proportionality assessment, shall be prohibited. Application of conditions requires an objective and detailed evaluation of the circumstances in question.
  - c. Reasons adduced to impose conditions shall be relevant, sufficient, convincing and compelling, and based on a reasonable assessment of the relevant facts including a risk assessment.<sup>71</sup>
  - d. The fact that conditions may be imposed as a matter of last resort during an event shall limit the extent to which conditions are imposed prior to assemblies in purported response to future contingencies.
  - e. Conditions may be imposed to protect the rights and freedoms of others.<sup>72</sup>
92. Prohibition shall only be used as a measure of last resort where no other less intrusive response would achieve the legitimate aim pursued.
- a. The authorities shall promptly communicate a decision to prohibit an assembly to assembly organizers, together with a clear statement of the legal rationale for their decision.
  - b. Prompt resort to an independent court to determine *de novo* any dispute on such a matter between organizers and the state shall be available.

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<sup>70</sup> A policy of relocating assemblies to locations far away from their intended audiences would violate this requirement.

<sup>71</sup> In which context suspicion or presumptions cannot suffice.

<sup>72</sup> Thus for example a large and noisy nighttime rally in a residential neighborhood may properly be limited, including through imposing restrictions on sound amplification equipment and lighting and visual effects.

93. The burden rests on the authorities throughout the process to justify and substantiate any restrictions imposed.

#### **IV. Protection**

94. States shall ensure the protection of all assemblies, public and private, from interference, harassment, intimidation and attacks by third parties and non-state actors.
- a. Authorities shall take particular care to ensure that marginalized and discriminated-against communities can assemble and voice their concerns free from interference, harassment, intimidation or attacks.
  - b. Where third parties aim to interfere, harass, intimidate or attack a peaceful assembly, the response of the authorities shall not be to ban or disperse the peaceful assembly, but rather to take measures to protect the assembly and to allow it to proceed.
95. The authorities shall ensure the protection and rights of bystanders and other citizens.
96. The costs of security and safety measures shall be fully born by the state. Financial charges shall not be levied on protest organizers and participants.
97. Persons have the right to assemble as counter-demonstrators, and thus simultaneous protests and counter-demonstrations shall not be banned. Rather, public safety authorities shall ensure that all demonstrations may proceed peacefully.
- a. Authorities shall protect simultaneous counter-demonstrations as well as original demonstrations, where both are peaceful. The authorities shall facilitate the ability of such assemblies to occur within sight and sound of one another.
  - b. Counter-demonstrations shall not be allowed to violate the right to freedom of assembly of the first party, nor *vice versa*.<sup>73</sup>

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<sup>73</sup> Meaning that such demonstrations must not be allowed to disrupt in a direct way the activities of other demonstrations.

98. The policing of assemblies shall be conducted in accordance with the African Commission on Human and Peoples' Rights Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa.

## **V. Sanctions and Remedies**

99. States shall not impose criminal sanctions in the context of laws governing assemblies. All criminal sanctions shall be specified within the penal code and not elsewhere. Assemblies shall not be governed by provisions of criminal law different from the generally applicable provisions of the penal code.

100. Sanctions shall be applied only in narrow and lawfully prescribed circumstances, on the basis of generally applicable civil and criminal law, shall be strictly proportionate to the gravity of the misconduct in question, and shall only be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process.

101. Liability shall be personal. Neither the organizers nor fellow participants of a public assembly shall be subjected to sanctions of any kind on the basis of acts committed by others.<sup>74</sup>

102. Excessive responsibilities or liabilities shall not be imposed on assembly organizers.

- a. Organizers shall not be subject to sanctions or dispersal merely for failure to notify.<sup>75</sup>
- b. Organizers shall not be held liable for the public costs of assemblies.<sup>76</sup>
- c. Organizers may only be subject to monetary sanction where all four of the following conditions are met: they fail to notify;<sup>77</sup> there is harm caused by the assembly;<sup>78</sup> that harm was reasonably foreseeable; and they fail to take reasonable steps within their power to prevent the act or omission in question.

<sup>74</sup> See *International Pen and Others (on behalf of Ken Saro-Wira) v. Nigeria*, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998), paras. 105-06.

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

<sup>75</sup> See *Malawi African Association and others v. Mauritania*, Comm. Nos. 54/91, 61/91, 98/93, 164-196/97 & 210/98 (2000), paras. 108-11.

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

<sup>77</sup> Where, however, significant barriers to the ability to submit notification exist, this should constitute a defense. Significant barriers include both legal and practical barriers, such as lack of ability to submit notification via communication technology and geographical distance from the center where physical submission of notification is required.

<sup>78</sup> Harm in this context refers to violence or destruction of property.

- d. Assembly organizers shall not be penalized on the basis of acts committed by individuals aimed at disrupting assemblies or clashes provoked by law-enforcement.

103. Where the right to peaceful assembly has been infringed, organizers and participants shall have a right to a remedy.

- a. The remedy shall include facilitation of future assemblies as necessary.
- b. The remedy shall include measures designed to address the concerns of the assembly that were harmed by unlawful prevention of the assembly.
- c. The remedy shall include compensation for any harms that have occurred.
- d. Where the authorities have pursued groundless or disproportionate sanctions or dispersal, or have pursued sanctions or dispersal with the aim of harassing particular assemblies, those responsible shall be held liable for violating the right to freedom of assembly.
- e. Where discriminatory conduct or physical attack or harassment or threats are carried out by private individuals in the course of an assembly, the authorities shall investigate, prosecute, and punish where necessary.
- f. The right to a remedy also requires other measures, such as satisfaction and guarantees of non-repetition, as and where appropriate.



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