

GLOBAL TRENDS IN NGO LAW

A quarterly review of NGO legal trends around the world

FREEDOM OF ASSEMBLY

Letter from the Editor

Peaceful assemblies can serve many purposes, including the expression of views and the defense of common interests. The freedom of peaceful assembly can be an important strand in the maintenance and development of culture, and in the preservation of minority identities. It is also recognized as one of the foundations of a functioning democracy, and its protection is crucial for creating a tolerant society in which groups with different beliefs, practices, or policies can exist peacefully together.

- Guidelines on Freedom of Peaceful Assembly, OSCE Office for Democratic Institutions and Human Rights

Recent weeks and months have witnessed the transformational power of public protest, demonstration and assembly. Most recently, in countries throughout the Middle East and North Africa, people have taken to the streets to demand change. And in Tunisia and Egypt, change has come. But in many other countries, both within and beyond the Middle East – from Azerbaijan to Syria, and from China to Venezuela—severe constraints on freedom of assembly continue to prevent citizens from coming together to collectively express, promote, pursue and defend their interests:

- On January 30, 2011, a coalition of student movement groups organized mass demonstrations involving thousands of activists in four cities in **Sudan**. In each city, the police and security agents attacked demonstrators using tear gas, water pipes and sticks; more than 100 students and journalists were arrested.¹
- On February 18, **Bahraini** security forces fired on protestors in Manama and wounded at least 38 people.²

¹ See The International Federation for Human Rights (FIDH), *A protest for freedoms inspired by the events in Tunisia and Egypt severely repressed by the National and Security Service*, February 10, 2011 available at: <http://www.fidh.org/A-protest-for-freedoms-inspired-by-the-events-in>.

² See Human Rights Watch, *Bahrain: Army, Police Fire on Protesters Donors Should Suspend Military Assistance Now*, February 18, 2011 available at: <http://www.hrw.org/en/news/2011/02/18/bahrain-army-police-fire-protesters>.

- On March 31, police in **Azerbaijan** detained activists, who were then quickly convicted in summary trials on charges of disobeying police orders and sentenced to imprisonment ranging from 5-13 days – in an effort to keep them from participating in planned protests on April 2nd. Anti-government protests went ahead on April 2nd nonetheless; riot police broke up the protests in Baku and arrested an estimated 150 protestors.³
- The wave of protest has risen in **Syria**, with tens of thousands taking to the streets in March and April. In recent weeks, Syrian security forces have launched a deadly crackdown on demonstrations, killing at least 200 people, according to human rights groups.⁴

Problems relating to protest and assembly are, of course, not limited to authoritarian regimes. State regulation of assemblies and the policing of public protest is a controversial issue in many countries around the world. Governments including Canada and Denmark have come under heavy criticism by human rights groups for their response to street protests at recent intergovernmental meetings. The G20 meetings in Toronto, **Canada**, in 2010 witnessed what has been called the largest mass arrest in Canadian history, with hundreds of peaceful protestors arrested and detained for extended time periods; no charges were brought against most of the detainees.⁵ And hundreds of demonstrators were arrested in clashes with riot police in Copenhagen, **Denmark** during the December 2009 climate change talks.⁶

Unfortunately, however, the law is too often used to narrow the space for assembly.⁷ In this issue of *Global Trends in NGO Law* we address laws that restrict the freedom of citizens and groups to exercise their right to assemble peacefully. We begin with a brief introduction to the international legal framework governing the freedom of assembly. We then examine several restrictive elements of laws that specifically govern public gatherings or meetings. Finally, we consider how legal provisions governing communications can have a chilling effect on free assembly.

Introduction

The freedom of assembly – the well-spring of the right to gather in public, to demonstrate and to protest – is enshrined in international legal instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Article 21 of the ICCPR states:

³ See Human Rights Watch, *Azerbaijan, Updated: Activists Jailed Ahead of Planned Protest International Partners Should Condemn Crackdown*, April 1, 2011 available at: <http://www.hrw.org/en/news/2011/04/01/azerbaijan-updated-activists-jailed-ahead-planned-protest>; see also Khadija Ismayilova for Eurasianet.org, *Azerbaijan: Opposition Protest Results in Wave of Arrests*, April 4, 2011 available at: <http://www.eurasianet.org/node/63222>.

⁴ See Associated Press, *3 killed at Syrian protest after Assad vows reform*, April 17, 2011 available at: http://news.yahoo.com/s/ap/20110417/ap_on_re_mi_ea/ml_syria.

⁵ See Sikina S. Hasham, The Human Rights Brief Center for Human Rights and Humanitarian Law, *Situation of the Right to Freedom of Expression, Assembly, Association, and Movement in Canada*, October 26, 2010 available at: <http://www.theglobeandmail.com/news/world/g8-g20/news/g20-related-mass-arrests-unique-in-canadian-history/article1621198/>; see also <http://hrbrief.org/2010/10/situation-of-the-right-to-freedom-of-expression-assembly-association-and-movement-in-canada/>.

⁶ The Sunday Times, *Copenhagen summit: 600 arrested at climate change protest*, December 12, 2009 available at: <http://www.timesonline.co.uk/tol/news/environment/copenhagen/article6954510.ece>.

⁷ We recognize, of course, that governments can and do exert pressure through other, “extra-legal” channels. In other words, while the tool of choice is law, many governments complement this with extra-legal harassment.

*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*⁸

It is the duty of States to make this right meaningful in practice. A sound legal framework to protect and enable assembly is fundamental. According to the Inter-American Commission on Human Rights, “the rights to freedom of assembly and of association have been broadly recognized as significant individual civil as well as political rights that protect against arbitrary interference by the state when persons choose to associate with others, and are fundamental to the existence and functioning of a democratic society.”⁹

There are very limited conditions under which restrictions on the right to peaceful assembly are permissible under international law, and each restriction is subject to a rigorous legal analytical test, as defined by the ICCPR in Article 21.¹⁰ Restrictions by the state are only justifiable if they are done “in conformity with the law” and in the pursuit of one of the legitimate aims “necessary in a democratic society” set forth in Article 21 of the ICCPR.¹¹ Terms such as “national security” and “public safety” refer to situations involving an immediate and violent threat to the nation or to its territorial integrity or political independence.¹² Nationwide limitations imposed on the basis of merely isolated or localized threats cannot be justified, therefore, and are impermissible.¹³

The laws presented in this issue of *Global Trends*, appear to be incompatible with international law because they erect legal barriers not able to withstand the legal test, as defined by the ICCPR in Article 21, and other conventions protecting the right to free assembly. These legal barriers include bans on public gatherings; requirements of advance notification amounting to permission; excessive government discretion in decision-making; restrictions relating to the substantive focus of public gatherings; restrictions relating to who may participate in public gatherings; burdensome liabilities placed on organizers of public gatherings; limits on public statements; criminal punishments against those who

⁸ International Covenant on Civil and Political Rights (ICCPR) (Article 21). The freedom of assembly is also recognized under the Universal Declaration of Human Rights (UDHR) (Article 20(1)) (1948); European Convention on Human Rights (Article 11) (1950) (ECHR); African (Banjul) Charter on Human and Peoples’ Rights (ACHPR) (Article 11) (1982); American Convention on Human Rights (ACHR) (Article 15) (1978); and Arab Charter on Human Rights (Article 28).

⁹ Inter-American Commission Report on Terrorism available at:

<http://www.cidh.oas.org/Terrorism/Eng/part.p.htm>.

¹⁰ While only binding on signatories to the ICCPR, there are sound arguments for broader applicability. As members of the United Nations, every government has accepted obligations to protect the rights enshrined in international law, including the Universal Declaration and the ICCPR, among others. No state has ever sought to join the UN and reserve against Articles 55 and 56 of the Charter, according to which member states pledge themselves to take joint and separate action to promote “universal respect for and observance of human rights and fundamental freedoms without distinction as to race, sex, language, or religion.” Of the 8 States that abstained from the General Assembly vote in 1948, only Saudi Arabia has not renounced its abstention. (Forsythe, David, Human Rights Fifty Years after the Universal Declaration, PS: Political Science and Politics, Vol. 31, No.3 (Sep. 1998).

¹¹ “No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of *national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*”

¹² Manfred Nowak, UN Covenant on Civil and Political Rights. Kehl 1993 p.394-396.

¹³ Id.

violate legal requirements; and the use of disproportionate force against the organizers. In the following sections, we provide illustrative examples of these legal barriers.¹⁴

Restrictions on Public Gatherings, Meetings, Demonstrations, Protests (Free Assembly)

Bans on Public Gatherings

The most extreme barrier to freedom of assembly is the prohibition of public gatherings.

- The Government in **Saudi Arabia** warned in early March that it would enforce the law banning public demonstrations. According to the Interior Ministry, demonstrations are prohibited “because these contradict the principles of Islamic law and the values and norms of the Saudi society; they further lead to public disorder, harm to public and private interests, breach of the rights of others, and to wreaking havoc that result in bloodshed.”¹⁵
- While the interim government in **Tunisia** has revoked the state-wide curfew, officials have extended the ban on public gathering of more than three people.¹⁶
- The law in **Myanmar (Burma)** prohibits public gatherings through multiple layers of regulation. Article 144 of the Penal Code bans groups of 5 people gathering together. SLORC¹⁷ Order No. 2 (1988) bans “gathering, walking, marching in procession, chanting slogans, delivering speeches, agitating, or creating disturbances on the streets of five or more people ... regardless of whether the act is with the intention of creating a disturbance or of committing a crime or not.” And most recently, Directive 2/2010, issued on 23 June 2010, prohibits the act of marching to the gathering point “holding flags or marching and chanting slogans in procession”.
- Under the state of emergency decree issued in **Thailand** in April 2010, police were authorized to disperse peaceful assemblies; public gatherings of more than 5 people were banned; and suspects could be detained for 30 days without charge.¹⁸

¹⁴ We do not attempt to provide a comprehensive overview of the legal framework for freedom of assembly or to highlight good regulatory practices. These are important issues and have been dealt with elsewhere. *See, e.g., Guidelines on Freedom of Peaceful Assembly*, prepared by the Organization for Security and Cooperation in Europe (OSCE), and specifically the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Warsaw (2007).

¹⁵ Neela Banerjee, Los Angeles Times, *Saudi Arabia activists warned that ban on protests will be enforced*, March 6, 2011, available at: <http://www.latimes.com/news/nationworld/world/la-fg-saudi-protest-20110306,0,3128624.story>. Despite the ban, protestors demonstrated in the city of Qatif on March 10. Saudi security forces fired on the protestors, injuring three. *See* http://articles.cnn.com/2011-03-10/world/saudi.arabia.protests_1_saudi-security-forces-saudi-expert-saudi-arabia?s=PM:WORLD

¹⁶ VOA news, *Tunisia Lifts Curfew, Extends State of Emergency*, Feb. 15, 2011, available at: <http://www.voanews.com/english/news/middle-east/Tunisia-Lifts-Curfew-Extends-State-of-Emergency-116245454.html>.

¹⁷ SLORC stands for the State Law and Order Restoration Council, which is the military junta ruling in Myanmar. The ruling junta changed its name to the State Peace and Development Council (SPDC) in 1997.

¹⁸ In January 2011, the Thai Government lifted the emergency decree in Bangkok and three nearby provinces. *See Thailand maintains emergency rule despite rights fears*, July 6, 2010 available at: <http://www.news.com.au/breaking-news/thailand-maintains-emergency-rule-despite-rights-fears/story-e6frfku0-1225888699874#ixzz1EpNs6krH>. *See also* IFEX, *Emergency decree lifted but rights violations continue*, January 12, 2011 available at: http://www.ifex.org/thailand/2011/01/12/emergency_decree_lifted/.

- On January 13, 2011, **Tuvalu** invoked the Public Order Ordinance for the first time, issuing a 14-day ban on large public meetings or gatherings. The ban came in the wake of a public protest march demanding the resignation of the Finance Minister.¹⁹

Advance Notification Amounting to Permission

Advance notification of public gatherings is a common regulatory requirement, and has been upheld by the UN Human Rights Committees and regional human rights mechanisms.²⁰ International law is clear, however, that notification requirements should not constitute a request for permission.²¹

- The Federal Law on Assemblies, Meetings, Demonstrations, Processions and Pickets (2004) in **Russia** requires notification to the government for any public event, except for a rally or picketing held by a single participant. (Article 7) The promoter of the event must notify the government in writing not later than 10 days prior to holding the public event. (Article 7) Based on governmental rhetoric²² and crackdowns of unauthorized protests²³, the notification requirement amounts to a requirement of advance permission.
- Two human rights defenders in **South Korea** were recently arrested and convicted for peacefully protesting without police permission. Prior to the protest, they submitted the required notification, but were turned down five times by police who said the protests could become violent. The protests took place anyway, and the two organizers were charged with “hosting an illegal protest.” In practice, “[t]he broad discretion police have to issue prohibition notices effectively means that protests can only take place with police permission.”²⁴

¹⁹ Solomon Times Online, *More Public Talking Need on Tuvalu’s Public Order Ban*, January 25, 2011, available at: <http://www.solomontimes.com/news.aspx?nwID=5831>.

²⁰ See UN Human Rights Committee, *Kivenmaa v. Finland*, Communication No. 412/1990, 31 March 1994; see also Appl 8191/78, *Rassemblement Jurassien Unite Jurassienne v. Switzerland*, 17 DR 93 (1979).

²¹ The Constitutional Court of Georgia annulled part of the *Law on Assemblies and Manifestations* (Article 8, para. 5.) that allowed a body of local government to reject a notification (thus effectively creating a system of prior license rather than prior notification), *Georgian Young Lawyers Zaal Tkeshelashvili, Lela Gurashvili and Others v. Parliament of Georgia* (2 November 2002), N2/2/180-183; see also *Inspector-General of Police v All Nigeria Peoples Party and Others (2007) AHRLR 179 (NgCA 2007)* where the Court of Appeal of Nigeria in the Abuja Judicial Division held “The Police Order Act relating to the issuance of police permit cannot be used as a camouflage to stifle the citizens’ fundamental rights in the course of maintaining law and order”; and *Mulundika and Others v. The People*, Supreme Court of Zambia, 1BHRC 199 (10 January 1996).

²² Prime Minister Vladimir Putin commented as follows: “If you get (permission), you go and march. If you don’t - you have no right to. Go without permission, and you will be hit on the head with batons. That’s all there is to it.” See: <http://www.weeklystandard.com/blogs/russian-democracy-needs-reset>.

²³ The unregistered movement called Strategy 31 – named for the Article 31 of the Russian Constitution, which protects the right to assemble peacefully – seeks to raise awareness of free assembly by gathering on the last day of each month with 31 days in the center of Moscow. Requests for permission to demonstrate have been routinely denied. The January 31, 2011 demonstration was no exception. Russian police detained dozens of democracy advocates in Moscow and St Petersburg, as they held rallies to demand freedom of assembly.

²⁴ Catherine Baber, Amnesty International’s Asia-Pacific Deputy Program Director. See Amnesty International, *South Korean rights defenders convicted for helping victims of violations*, January 24, 2011 available at: <http://www.amnesty.org/en/news-and-updates/south-korean-rights-defenders-convicted-helping-victims-violations-2011-01-24>.

- Article 3 of the Public Meetings and Events Law in **Cameroon** requires organizers of public meetings to notify officials at least three days in advance; and to obtain a permit from administrative authorities.²⁵ The law does not require prior government approval. However, in practice, the government often refuses to issue permits to organizers for assemblies organized by persons or groups critical of the government.²⁶ On May 3, 2010 security forces prevented members of the Union of Cameroonian journalists (UCJ) from demonstrating in Yaoundé because the authorities claimed the UCJ had not provided ample notice of the event to the appropriate authority.²⁷
- The **Venezuelan** Law on Political Parties, Public Meetings, and Protests, in Article 43, states that written notice to hold public meetings is required with at least 24 hours' advance notice; the request must include the objective; and authorities must agree to the proposed time and place of the public meeting or demonstration.²⁸ On December 23, 2010, hundreds of University students were prevented from demonstrating against a new law affecting University curriculum, by riot police who claimed the demonstration had not been authorized.²⁹
- The Public Order Act³⁰ in **Zambia** requires organizers of public meetings to notify the police seven days in advance of the meeting. Article 5(8), however, speaks not of notice but of permitting, when it authorizes the police to “stop any procession for which no permit has been issued.” Moreover, Article 7 provides that any assembly “for which a permit is required ... and which takes place without the issue of such permit ... shall be deemed to be an unauthorized assembly” and all those taking part in the assembly may be arrested and liable to criminal penalties. In sum, the “notification” requirement is tantamount to a permitting process.

Excessive Government Discretion

The use of vague, ambiguous language in laws regulating public gatherings invites the exercise of excessive government discretion, and may result in subjective and arbitrary decision-making by regulating authorities.

- Article 48 of the **Venezuelan** Law on Political Parties, Public Meetings, and Protests prohibits the use of uniforms during public meetings, but fails to define the term “uniform”; the distribution of T-shirts at public gatherings by CSOs in Venezuela could run afoul of this prohibition. In addition, Article 51 authorizes the government to dissolve assemblies that “disrupt normal party or government functions or the flow of transit, or which incite disruptions.”³¹

²⁵ Loi N° 90/055 Du 19 Décembre 1990 Portant Regime Des Reunions Et Des Manifestations Publiques, Article 3 available at: http://juriafrica.com/droit_legislation.html.

²⁶ See United States Department of State, 2010 Country Reports on Human Rights Practices - *Cameroon*, April 8, 2011, available at: <http://www.unhcr.org/refworld/docid/4da56ddd.html>.

²⁷ Id.

²⁸ Ley De Partidos Políticos, Reuniones Públicas y Manifestaciones, Gaceta Oficial N° 27.725 30 Abril 1965 modified by Ley de Reforma Parcial de la Ley de Partidos Políticos, Reuniones Públicas y Manifestaciones, Gaceta Oficial N° 6.013 (EX) del 23 de diciembre de 2010.

²⁹ See BBC News, *Venezuela students protest at university law*, December 23, 2010 available at: <http://www.bbc.co.uk/news/world-latin-america-12071995>.

³⁰ See translation available at http://www.saflii.org/zm/legis/consol_act/poa133/.

³¹ Ley De Partidos Políticos, Reuniones Públicas y Manifestaciones, Gaceta Oficial N° 27.725 30 Abril 1965 modified by Ley de Reforma Parcial de la Ley de Partidos Políticos, Reuniones Públicas y Manifestaciones, Gaceta Oficial N° 6.013 (EX) del 23 de diciembre de 2010.

- According to the 2009 Law on Demonstrations in **Cambodia**, the competent authorities shall respond positively to a notification letter, unless “there is clear information indicating that the demonstration may cause danger or may seriously jeopardize security, safety and public order.”³² It is unclear what “clear information” means in this context.
- The Public Order and Security Act (POSA) of **Zimbabwe** provides regulatory authorities, including the police, with substantial power to interfere with private as well as public meetings of organizations. While Article 2 of the POSA specifically excludes from the law’s purview “meeting[s] of any organisation held in any private place; or any public place that is not wholly in the open;” Article 23 (8) provides the government the right to request that organizations holding non-public gatherings “submit to [the regulating authority] from time to time or at such regular intervals as it may require a list of the members of the [organization] who are entitled to attend the meeting[s] concerned.” The POSA also allows authorities to place restrictions on any public meeting or demonstration³³ or prohibit it entirely;³⁴ if they have “reasonable grounds for believing” the gathering will result in “public disorder, a breach of the peace, or obstruction of any thoroughfare.”³⁵ The law also allows police to prohibit public demonstrations in any area for up to one month.³⁶

Content-Based Restrictions

Laws may specifically target (and restrict) public gatherings and meetings with “political” content.

- The draft Public Order Management Bill introduced in **Uganda** in 2010 would, if enacted, provide the legal basis for the Government to control and even to prevent certain gatherings defined as “public meetings.” A “public meeting” is defined to include a gathering of three or more persons in a public place where the “principles, policy, actions or failure of any government, political party or political organisation ... are discussed; or held to form pressure groups to hand over petitions ... or to mobilise or demonstrate support for or opposition to the views, principles, policy, actions or omissions” of another person, organization, the government or political party. (Section 6) The targeted focus of the Bill on the substantive content of public meetings suggests a legislative purpose to regulate meetings intended to affect public opinion on public policy issues. In short, the regulatory focus of the Bill is on political discussion and debate.
- In **Ecuador**, criminal laws have been enacted to punish citizens who publicly protest against public works projects that affect the environment and indigenous communities. Articles 246-248 of the Penal Code subject those who “obstruct” the execution of public works projects to a fine and/or imprisonment up to three months.³⁷

³² See unofficial translation of Law on Demonstrations, available at:

http://www.sithi.org/admin/upload/law/New_Law_on_Peaceful_Demonstration2009%28Eng%29.pdf.

³³ Public Order and Security Act (POSA) of Zimbabwe *as amended 2007*, Article 26, distributed by VERITAS Trust and available at:

http://www.kubatana.net/html/archive/legisl/080111posamdac.asp?sector=LEGISL&year=2007&range_start=61.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Código Penal de Ecuador, Artículo 246 available at: http://www.oas.org/juridico/MLA/sp/ecu/sp_ecu-int-text-cp.pdf.

Restrictions on Categories of Persons

Laws may specifically restrict or prohibit certain individuals or categories of individuals from participating in public gatherings and demonstrations.

- In many countries, universities have served as hotbeds of political activism and student movements for change. In **Malaysia**, however, it is illegal for students to join political parties or take part in political campaigns or protests; students who do so risk expulsion and fines. Under the 1971 Universities Act³⁸, students are barred from expressing “support, sympathy or opposition” to any political party or trade union, domestic or foreign. Four students are now planning a constitutional challenge to this law.³⁹
- The 2009 Law on Demonstrations in **Cambodia** refers to freedom of assembly only with regards to Khmer citizens, and thereby seems to exclude foreigners from the embrace of freedom of assembly. (Article 2)
- The lesbian, gay, bisexual and transgendered (LGBT) community is often the target of restrictions on the freedom of assembly. In **Hungary**, for example, the 2011 gay pride parade, organized by the Rainbow Mission Foundation, was banned by the Hungarian police. Interestingly, the Foundation had received permission, but requested an extension of the parade route so as to appear before the Parliament building, in order to voice opposition to the newly proposed constitution and the new media law. Permission was withdrawn altogether.⁴⁰ **Russia** routinely prohibited the Moscow LGBT pride parades in 2006, 2007 and 2008.⁴¹
- Amendments to the **Russian** Law on Demonstrations, signed by President Medvedev in December 2010, prohibit people charged with minor administrative offences from organizing or attending rallies (or unsanctioned protests).⁴²

Responsibilities of Organizers

While it is not uncommon for laws to impose certain obligation on the organizers of public gatherings and demonstrations, the responsibilities should not be so burdensome as to deter the gathering itself.

- Article 5 of the Public Meetings and Events Law of **Cameroon** requires the organizers of any public meeting to appoint an “Executive” made up of three people who will be responsible for keeping the peace during the public meeting. The “Executive” must “prevent any violation of law and prevent speeches that conflict with public policy or are likely to incite people to commit felonies or misdemeanors.”⁴³
- The draft Public Order Management Bill in **Uganda**, if enacted, would impose onerous burdens on organizers. Among other obligations, organizers would have to “ensure that all participants are unarmed and peaceful” [11(c)]; “ensure that statements made to the media and public do not conflict with any existing laws of Uganda” [11(d)]; and “compensate any party of person

³⁸ See translation, available at: <http://www.scribd.com/doc/7708362/Laws-of-Malaysia-University-University-College-Act-UUCA-AUKU>.

³⁹ See New York Times, available at: <http://www.nytimes.com/2010/12/04/world/asia/04iht-malay.html>

⁴⁰ Subsequently, however, the Budapest Metropolitan Court overturned the city’s refusal to grant permission for the 2011 gay pride parade.

⁴¹ See <http://hrbrief.org/2011/02/freedom-to-assemble-in-russia-does-the-future-hold-hope-for-improvement/>.

⁴² <http://en.rian.ru/russia/20101210/161713190.html>.

⁴³ Loi N° 90/055 Du 19 Décembre 1990 Portant Regime Des Reunions Et Des Manifestations Publiques, Article 5 available at: http://juriafrica.com/droit_legislation.html.

that may suffer loss or damage from any fall out of the public meeting” [11(g)]. Taken together, the responsibilities imposed by the Bill on organizers of public meetings are so difficult to meet as to likely discourage the exercise of and thereby constitute an infringement on the freedom of assembly.

Restrictions on Public Statements

Freedom of assembly and freedom of speech are inextricably intertwined. Laws restricting the ability to make public statements may impact directly on the freedom of assembly.

- The Government in **Myanmar (Burma)** used official media channels to warn that anyone who disrupts the country's election could face up to 20 years in prison. Through the *New Light of Myanmar* (Myanmar's state run press), the regime reminded people that the 1996 Law on the Transfer of State Responsibility is still in force, a law that provides up to 20 years imprisonment for anyone who "incites, delivers a speech or makes oral or written statements that undermine the stability of the state, community peace and tranquility and prevalence of law and order."⁴⁴
- The Public Order and Security Act (POSA) of **Zimbabwe** empowers any government authorities to prevent or disrupt any gathering wherever authorities believe that a seditious or subversive statement is likely to be made. On April 13, 2011 police arrested Father Marko Mabutho Mkandla, a Catholic priest, for holding a church service in memory of victims and survivors of the Gukurahundi massacres of the mid-eighties. Authorities have accused Father Mkandla of violating the POSA and the Criminal Law Codification Act by "holding a public meeting without police clearance" and "communicating false statements against the state" and "causing offence to a particular tribe."⁴⁵ Human rights groups believe the Mugabe, regime is employing these laws "to try and silence all dissenting voices" ahead of planned elections in the country.⁴⁶

Criminal Punishments

The use of criminal sanctions against individuals organizing or participating in illegal public gatherings serves as a substantial deterrent to the exercise of freedom of assembly.

- Articles 49 and 50 of the **Venezuelan** Law on Political Parties, Public Meetings, and Protests provide for criminal penalties – up to 30 days of detention – for organizers of assemblies held in violation of law. Speakers at unlawful assemblies face the same penalty. Individuals engaged in assemblies that disrupt normal party or government functions or the flow of transit are also subject to 15-30 days of detention.
- The government of **Ecuador** has employed provisions in its Penal Code to discourage public protest. Under Article 153 of the Penal Code those who “support, lead, or organize unauthorized public protests on streets, squares or other open spaces could face imprisonment up to three months.⁴⁷ In addition, under Article 160.1 of the Penal Code acts of “sabotage and terrorism”

⁴⁴ See Straitstimes.com, *Myanmar sends poll warning*, August 4, 2010 available at: http://www.straitstimes.com/BreakingNews/Asia/Story/STIStory_561925.html.

⁴⁵ Tererai Karimakwenda, SW Radio Africa (London), *Zimbabwe: Catholic Priest and Healing Minister Arrested after Prayer Service*, April 15, 2011 available at: <http://allafrica.com/stories/201104160060.html>.

⁴⁶ Id.

⁴⁷ Código Penal de Ecuador, Artículo 153 available at: http://www.oas.org/juridico/MLA/sp/ecu/sp_ecu-int-text-cp.pdf.

carry a possible prison sentence of four to eight years.⁴⁸ The definition of “sabotage and terrorism” includes “crimes against the common security of people or human groups of whatever kind, or against their property,” by individuals or associations “whether armed or not.”⁴⁹ Recently, Article 160.1 in particular has been used to prosecute hundreds of demonstrators. As of February 2011, 189 people have been detained by the government on charges of sabotage and terrorism stemming from their participation in protests.⁵⁰

- Similarly, in February 2008, in **El Salvador**, thirteen Salvadorans faced terrorism charges for their participation in a protest against the privatization of water distribution in the town of Suchitoto under the Special Law against Acts of Terrorism. The law does not include an explicit definition of terrorism, however, Article 1 states the purpose of the law is to prevent and punish crimes that “by their form of execution, or means and methods employed, evidence the intention to provoke a state of alarm, fear or terror in the population, by putting in imminent danger or affecting peoples’ life or physical or mental integrity, or their valuable material goods, or the democratic system or security of the State, or international peace.”⁵¹ The prosecution of demonstrators, who blocked roads or threw rocks during protests, under this law, has been widely criticized for mischaracterizing acts of terrorism.⁵²

Disproportionate Force

Government crackdowns of public protest may rely on disproportionate force, resulting in the injury or death of those assembled and chilling future assemblies. Recent events have repeatedly demonstrated the willingness of governments to rely on excessive force; several examples are highlighted in the Introduction above. In some cases, the law may support or encourage the use of disproportionate force. As but one example:

- The Constitution of **Peru** recognizes the right of peaceful assembly; however, the executive branch issued a controversial decree in 2007 that amended Article 20 of the Penal Code to limit police and army liability in cases of death or injury when officers act within the scope of their authority.⁵³ Recently, tens of thousands of indigenous Peruvians have taken to the streets to protest against newly enacted laws that grant corporations mining rights in indigenous territories without the consent of the local communities. In several instances violent clashes with authorities occurred. Most notably, the protests of May of 2009 when a state of emergency was declared, and police and army troops used extreme force against the indigenous protesters, resulting in dozens of protester and police fatalities.⁵⁴

⁴⁸ Id at Artículo 160.1.

⁴⁹ Id.

⁵⁰ Frances Fuentes for El Universo and EcuadorTimes.com, *Social Protests are Considered Terrorism in Ecuador*, February 13, 2011 available at: <http://www.ecuadortimes.net/2011/02/13/social-protests-are-accused-as-terrorism-in-ecuador/>.

⁵¹ Human Rights Watch, *El Salvador: Terrorism Law Misused Against Protesters Salvadoran Legislature Should Amend Overbroad Law Against Terrorism*, July 30, 2007 available at: <http://www.hrw.org/en/news/2007/07/30/el-salvador-terrorism-law-misused-against-protesters>.

⁵² Id. José Miguel Vivanco, Americas director of Human Rights Watch has said, “[b]locking roads and throwing rocks may well be crimes, but they’re not acts of terrorism. The Salvadoran government can legitimately prosecute protesters who break the law, but it should not misuse counterterrorism legislation against less serious crimes.”

⁵³ Artículo 1 de la Decreto Legislativo N° 982, publicado el 22 julio 2007.

⁵⁴ In June 2009, the Peruvian Congress overturned two Presidential decrees “that were aimed at opening large areas of the Peruvian Amazon to logging, dams and oil drilling but set off protests by indigenous groups...in which

Barriers to Communication

In order to plan demonstrations and protests, as well as to receive and exchange information more broadly, the ability to communicate with colleagues both within and outside one's own country is fundamental. Modern technologies have dramatically expanded possibilities and means of communication. Laws, however, too often seek to cut off communication, and to disrupt virtual assembly.

Legal barriers may seek to limit media and press coverage of upcoming demonstrations. As but one example, Article 49 of the **Venezuelan** Law on Political Parties, Public Meetings, and Protests provides for criminal and monetary penalties for companies that print or record announcements of public meetings or protests which authorities have publicly announced are in violation of the law.

Legal constraints (as well as travel restrictions) may limit contact with foreign governments and organizations. In **Tunisia**, for example, representatives of Tunisian CSOs who have contact with foreign governments or organizations are at risk of conviction and imprisonment, if Tunisian authorities determine that these contacts “incited prejudice” against Tunisia’s vital interests, economic security, or diplomatic relations – broad terms that give the government wide discretion to target disfavored groups. In **Venezuela**, the Law for Protection of Political Liberty and National Self-Determination prohibits NGOs from hosting a foreign citizen who speaks out in a manner that might offend State institutions or senior officials.

The Government of **Zimbabwe** has gone further and sought to limit not only contact with foreign colleagues, but the watching of Internet videos of events in foreign countries – namely, the uprisings in the Middle East. Police in Harare, on February 19, raided a closed-door meeting at which a video on events in Tunisia and Egypt was shown. The police confiscated computers and arrested everyone there. 45 activists were formally charged with treason or with attempting to overthrow the government by unconstitutional means. Convictions of these crimes carry penalties of life in prison or death for the former, and up to 20 years for the latter.⁵⁵

The **Chinese** Government implements a policy called “stability maintenance” (“weiwēn”), which seeks, among other things, to limit the planning and preparation of public gatherings and protests. As part of the “weiwēn” policy, the Government has established the Internet News Coordination Bureau, in order to police social networking sites and other Internet forums. Internet users have been targeted and detained for posting information about potential protests; at least five activists have been detained on charges of endangering state security, subverting state power, and inciting subversion of state power.⁵⁶

dozens died.” Simon Romero for The New York Times, *Peru Overturns Decrees That Incited Protests*, June 18, 2009 available at: <http://www.nytimes.com/2009/06/19/world/americas/19peru.html>.

⁵⁵ See International Freedom of Expression Exchange Clearing House (Toronto)

Zimbabwe: Activists Arrested for Watching Video on Middle East Unrest, March 2, 2011 available at: <http://allafrica.com/stories/201103030023.html>.

⁵⁶ See Andrew Jacobs and Jonathan Ansfield, *Well-Oiled Security Apparatus in China Stifles Calls for Change*, New York Times, February 28, 2011, available at: <http://www.nytimes.com/2011/03/01/world/asia/01china.html>.

Indeed, with the increasing power of the Internet, governments are increasingly seeking to regulate and restrict the connectivity that the Internet offers. **Egypt**, in the waning days of Mubarak's regime, severed itself from the global Internet for a five-day period. In **Syria**, the authorities have blocked Facebook and other social network providers, including mobile messaging facilities (SMS).⁵⁷ In recent years, several other countries – **Nepal, Burma, Bahrain, Uganda** and **Yemen** – have cut off communications via the Internet. Such government efforts to restrict what's been called the freedom of connect⁵⁸ is beyond the scope of this report, but closely related to the ability to plan, inform and prepare for public gatherings and demonstrations.

Conclusion

The threats to freedom of assembly are real. The legal barriers are formidable. At the same time, however, there are significant opportunities for enabling reform and an expansion of civic space. Indeed, the reform opportunities in the Middle East were unimaginable six months ago.

In addition, the issue of assembly is receiving much-needed attention globally, through the UN Human Rights Council (UNHRC). In September 2010, the UNHRC passed a Resolution on "The Rights of Freedom of Peaceful Assembly and of Association."⁵⁹ The Resolution called for the appointment of a *Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association* for the UNHRC. In March 2011, human rights campaigner Maina Kiai was appointed as the Special Rapporteur. His appointment has been welcomed.⁶⁰ The spotlight he will shine on the freedoms of assembly and association could not be more timely.

⁵⁷ PEN International Statement on Developments in Middle East, January 31, 2011, available at: <http://www.penusa.org/pen-internl-statement-middle-east>.

⁵⁸ U.S. Secretary of State Hillary Clinton, *Remarks on Internet Rights and Wrongs: Choices & Challenges in a Networked World*, February 15, 2011, Washington, D.C.

⁵⁹ See the full text of the Resolution at http://ecnl.org/dindocuments/335_UN%20FoA%20Resolution%20Final.pdf.

⁶⁰ See press release at <http://www.civicus.org/civicus-home/1698>.