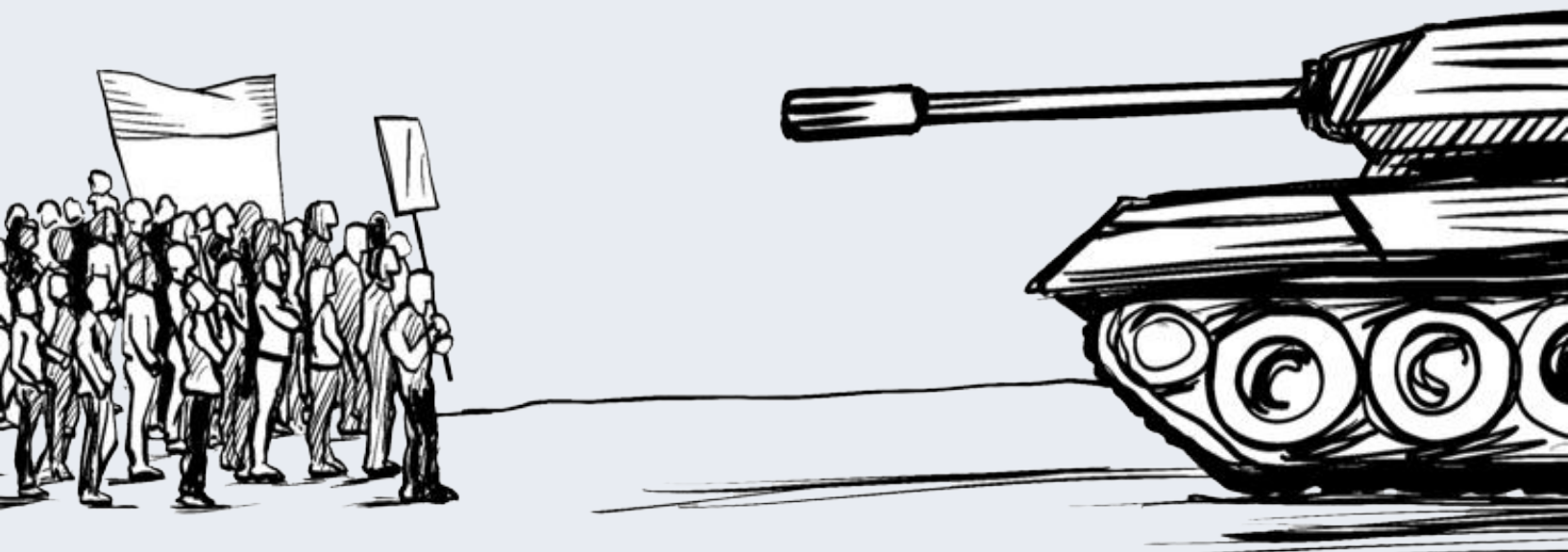


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SPECIAL COLLECTION OF THE CASE LAW ON FREEDOM OF EXPRESSION

Case law



on peaceful protests

Case law on peaceful protests

Credits

Collection directors

Lee C. Bollinger
Catalina Botero-Marino

Author

Ona Flores, *human rights lawyer, independent consultant*

Design

Vladimir Flórez (Vladdo), *illustrator*
Lourdes de Obaldía, *layout and graphic designer*

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I. Introduction

Peaceful protests and demonstrations have always been an essential means of the social, economic, and political transformations that have characterized human history. We owe many of the advancements that have benefited humanity, including the world's human rights victories, to courageous individuals who joined others in protests and mass demonstrations. We cannot think of the women's rights movement, the labor rights achievements or any of world's struggles against slavery, apartheid, colonialism, discrimination, and political oppression without protests.

Recent years have seen a continuous rise in protest movements,¹ with mass demonstrations erupting almost daily worldwide for various causes. Protests are also growing in complexity. Digital technologies have brought enormous opportunities for organizing, participating in, and reporting on protests, but have also introduced risks as well as tools for government repression. Protests that use civil disobedience and non-violent direct-action tactics are becoming increasingly common and creative, particularly within the racial justice, feminist, and environmental movements. At the same time, protesters are navigating an increasingly restrictive legal environment, including outright bans or complex authorization and notification procedures, and face stigmatization, shocking brutality, criminalization and digital censorship and surveillance.² The COVID-19 pandemic exacerbated some of these constraints, with emergency regulations used as pretext to further clampdown on protests in various countries.

These trends have garnered new attention from legal practitioners and human rights defenders interested in supporting peaceful protesters and ensuring national legislation, policies and practices affecting peaceful protests comply with human rights principles and norms. In particular, the last decade has seen increased efforts by civil society organizations to use courts (domestic and regional), as well as international human rights bodies, to advance protection of human rights in the context of peaceful protests.

Notably, there is a growing jurisprudence of the European Court of Human Rights ("ECtHR") on the issue of peaceful protests, with important impact on the interpretation of Articles 10 and 11 of the [European Convention on Human Rights](#), which protect the rights to freedom of expression and peaceful assembly, respectively.³ Judgments delivered in the past five years by domestic courts across the world have far-reaching implications for the interpretation of the balance between the rights to freedom of peaceful assembly and of expression and competing interests involved, namely national security, public order, public health and morals, as well as the protection of other human rights. This includes decisions adopted by the Ugandan Constitutional Court in the case of [Human Rights Network Uganda v. Attorney General](#), by the

1 Samuel Brannen, Christian Stirling Haig and Katherine Schmidt, "[The Age of Mass Protests: Understanding an Escalating Global Trend](#)," Center for Strategic and International Studies, March 2, 2020; Erica Chenoweth, Sirianne Dahlum, Sooyeon Kang, Zoe Marks, Christopher Wiley Shay, and Tore Wig, "[This May Be the Largest Wave of Nonviolent Mass Movements in World History. What Comes Next?](#)" Washington Post, November 16, 2019.

2 See thematic reports by the United Nations Special Rapporteur on the rights to peaceful assembly and of association: <https://www.ohchr.org/en/special-procedures/sr-freedom-of-assembly-and-association/annual-thematic-reports>.

3 ECtHR, [Guide on the case-law of the European Convention on Human Rights on Mass Protests](#), Last update: 31.08.2022.

Federal Supreme Court of Brazil in the case of *SINDIPETRO AL SE v. Office of the General Counsel for the Federal Government* and by the Supreme Court of the United Kingdom in the case of *Director of Public Prosecutions v. Ziegler and others*.

Many of the decisions also provide important interpretations of State's duties to facilitate peaceful protests and the right of individuals to join together to express their grievances or aspirations, without fear of being harassed, injured, arbitrarily arrested and detained, tortured, raped or killed. This includes recent landmark decisions by the Inter-American Court of Human Rights ("IACtHR") in the *Case of Women Victims of Sexual Violence in Atenco V. México*, by the African Commission of Human and Peoples' Rights ("ACHPR") in the case of *Williams v. Zimbabwe* and by the Supreme Court of Justice of Colombia in the case *Soledad María Granda Castañeda and Others v. Presidency of Colombia and Others*.

This paper seeks to provide a general overview of this growing jurisprudence. It summarizes relevant principles of international human rights laws on the right to peaceful assembly and freedom of expression with respect to peaceful protests and includes a selection of caselaw organized by themes and issues commonly addressed by courts around the world.

Defining "peaceful protest case-law"

Judgements and decisions included in this collection satisfy two key criteria.

First, they touch on issues of law or fact concerning "protests," in their different phases, including before, during and after the protests. For the purposes of this paper, "protests" are defined in broad terms to encompass any form of assembly or gathering that provides space for people to come together to express opposition to certain policies and actions, to formulate grievances, demands and aspirations or to assert or affirm group solidarity or identity. The key feature of this definition is the existence of a "protest-related" objective. While protests are the most commonly restricted type of assembly, not every assembly constitutes a protest.⁴ Assemblies can serve other goals, such as entertainment, cultural, religious or commercial objectives.⁵ This definition also recognizes that protests take various and ever-changing forms, such as demonstrations, marches, processions, rallies, vigils, sit-ins, walkabouts, and even online protests and road closures. They can also include multiple tactics and actions to draw public attention to their cause, such as civil disobedience and non-violent direct action.

Second, decisions included in this paper have as a main or significant issue the enjoyment of the rights to freedom of peaceful assembly and freedom of expression. That is, the central crux of the decisions contained in this collection is the extent to which restrictions imposed on protests amount to unwarranted interference to the rights to freedom of peaceful assembly and expression.

⁴ [Guide on the case-law of the European Convention on Human Rights on Mass Protests](#) (Last update: 31.08.2022), page 6.

⁵ Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 12.

Data sources

The decisions included in this collection can be found in [Columbia's Global Freedom of Expression database](#) and have been selected among 178 of the leading and most recent judgments and decisions concerning peaceful protests. The list of cases presented in this collection is not exhaustive and further research is needed into the case-law of many more jurisdictions around the world. However, the collection provides a diverse and cross-cutting sample of cases covering a wide range of geographies and issues concerning peaceful protests.

Structure of the paper

Part II provides an overview of the legal framework, norms and standards concerning the right to peaceful assembly and freedom of expression applicable to the context of peaceful protests. We review the legal framework, scope and content of these two fundamental rights, as developed by international and regional human rights mechanisms, as well as by some constitutional courts and tribunals when dealing with peaceful protests.

Part III presents a number of selected decisions and judgments organized by themes and issues most commonly addressed in protest litigation.

II. General overview of applicable norms and standards

Peaceful protests are closely linked to and may involve the exercise of multiple human rights depending on the circumstances.⁶ However, international, and regional human rights bodies and domestic courts generally consider that the rights to freedom of expression and peaceful assembly form the basis for the exercise of peaceful protest and often invoke both freedoms when examining cases. Indeed, protests constitute expressions of opinion within the meaning of the right to freedom of expression. In their collective expression, protests are protected by the right to peaceful assembly.⁷ In conjunction, these two fundamental rights amply protect the right of individuals to organize, hold, participate in, observe, monitor and record these events.⁸

This section summarizes key standards on the right to peaceful assembly and freedom of expression developed by international and regional human rights bodies and domestic courts applicable to peaceful protests.

A. The right to peaceful assembly

The right to peaceful assembly is recognized in Article 20 of the [Universal Declaration of Human Rights](#) and Article 21 of the [International Covenant on Civil and Political Rights](#) (ICCPR). According to Article 21, the right of peaceful assembly is not absolute and it can be subject to certain restrictions. However, restrictions can only be prescribed by law and be 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. This fundamental freedom is recognized in other specific international⁹ and regional human rights treaties and instruments.¹⁰

In addition to being recognized in international and regional human rights treaties, the right to peaceful assembly is also enshrined in the national constitutions of most countries in the world. The United Nations Human Rights Committee (UN HRC) estimates that a total of 184 of the 193 States Members of the United Nations recognize the right to peaceful assembly in their constitutions.¹¹

International and regional treaties stipulate that State parties should ensure the enjoyment of

6 For instance, peaceful protests often involve the exercise of the right to freedom of association and the right to participate in public affairs and depend on the effective enjoyment of other human rights, including the rights to life, freedoms from torture and from arbitrary arrest, the right to privacy, labor rights and the principle of non-discrimination.

7 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 3.

8 Human Rights Council Resolutions [19/35 of 23 March 2012](#), [22/10 of 21 March 2013](#), [25/38 of 28 March 2014](#), [31/37 of 24 March 2016](#), [38/11 of 6 July 2018](#) and [44/20 of 23 July 2020](#).

9 See, for example, Article 8 (d) of the [International Covenant on Economic, Social, Cultural Rights](#), Article 15 of the [Convention on the Rights of the Child](#) and Article 26 of the [International Convention on the Rights of Migrant Workers and their Families](#).

10 Article 11 of the [European Convention on Human Rights](#); Article 14 of the [American Convention on Human Rights](#), and Article 11 of the [African Charter on Human and Peoples' Rights](#). The right to peaceful assembly is also recognized in Article 24 of the [Human Rights Declaration of the Association of Southeast Asian Nations](#) (ASEAN) and in Article 24 (c) of the [Arab Charter on Human Rights](#).

11 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 3.

the right to peaceful assembly to *all individuals* within their territory and subject to its jurisdiction, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

The UN HRC has stressed that this includes “citizens and non-citizens alike” and “it may be exercised by, for example, foreign nationals, migrants (documented or undocumented), asylum seekers, refugees, and stateless persons.”¹² Similarly, the Constitutional Court of South Africa has held that the national constitution recognizes that “everyone”, regardless of national origin, is entitled to the right to peaceful assembly. According to the Court “the only internal qualifier contained in this constitutional provision is that anyone exercising this fundamental right must do so peacefully and unarmed.”¹³

1. Definition of “assembly”

Courts and human rights bodies avoid providing a strict definition of what constitutes an “assembly” for the purposes of the right to peaceful assembly, recognizing that assemblies can take many forms and types and serve multiple purposes, peaceful protest being one of them. Definitions generally include two elements: i) the presence of more than one participant and ii) that they are gathered for a specific purpose.

For instance, in the ECtHR jurisprudence, “assembly” is defined broadly by the common purpose of its participants, distinct from a “random agglomeration of individuals each pursuing their own cause.”¹⁴ For the ECtHR, this right generally “covers both private meetings and meetings in public places, whether static or in the form of a procession.”¹⁵ The ECtHR has also held that the concept of “assembly” under the European Convention is autonomous to definitions found in domestic legal regulation.¹⁶ For instance, it affirmed that a lengthy occupation of premises that is peaceful, even though it is clearly in breach of domestic law, may be regarded as a “peaceful assembly.”¹⁷

The UN HRC has also understood participating in an “assembly” as “organizing or taking part in a gathering of persons for a purpose such as expressing oneself, conveying a position on a particular issue or exchanging ideas.”¹⁸ The gathering can also be intended to assert or affirm group solidarity or identity or serve entertainment, cultural, religious or commercial goals. The UN HRC has stressed that the right to peaceful assembly “protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article

12 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 5

13 Constitutional Court of South Africa, [Mlungwana and Others v The State and Another](#) [2018] ZACC 45, para. 62.

14 ECtHR, [Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association](#), Updated on 31 August 2022.

15 ECtHR, [Kudrevičius and others v. Lithuania](#), [GC] Judgment of 15 October 2015, para. 91

16 ECtHR, [Navalnyy v. Russia](#), Judgment of 15 November 2018, para. 108.

17 ECtHR, [Tuskia an Others v Georgia](#), Judgment of 11 October 2018, para. 73.

18 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 12.

21 whether they are stationary, such as pickets, or mobile, such as processions or marches.”¹⁹

The African Commission on Human and Peoples’ Rights (ACHPR) has broadly defined an “assembly” for purposes of Article 11 of the [African Charter on Human and Peoples’ Rights](#) as “an act of intentionally Wgathering, in private or in public, for an expressive purpose and for an extended duration.”²⁰ The ACHPR has underscored that 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.”²¹ The IACtHR has also indicated that Article 15 of the American Convention “covers both private meetings and meetings on public roads, whether static or with venues.”²²

The UN HRC, the ACHPR and the Inter-American Commission on Human Rights have all recognized that assemblies may take place online.²³

2. Requirement of “peaceful”

With the exception of Article 11 of the [African Charter on Human and Peoples’ Rights](#)²⁴, human rights treaties (and most national constitutions) only protect the right to “peaceful” assembly. The jurisprudence and doctrine of courts and human rights bodies have helped define what should be understood as “peaceful.” The focus is generally placed on the intentions of the organizers.

The ECtHR has affirmed that the right to freedom of peaceful assembly “is secured to everyone who has the intention of organising a peaceful demonstration.”²⁵ This means that all gatherings except those where the organizers and participants have “violent intentions, incite violence or otherwise reject the foundations of a democratic society”²⁶ are protected under article 11 of the European Convention. Similarly, the ACHPR has affirmed that “an assembly should be deemed peaceful if its organizers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful.”²⁷

The UN HRC recognizes that “there is not always a clear dividing line between assemblies that are peaceful and those that are not” and “there is a presumption in favour of considering assemblies to be peace-

19 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 6.

20 African Commission on Human and Peoples’ Rights, [Guidelines on Freedom of Association and Assembly in Africa](#), para. 3.

21 African Commission on Human and Peoples’ Rights, [Guidelines on Freedom of Association and Assembly in Africa](#), para. 3.

22 IACtHR, [López Lone and Others V. Honduras](#). Preliminary Objections, Merits and Reparations. Judgment of October 5 2015. Series C No. 302, para. 167, and IACtHR. [Case of Women Victims of Sexual Violence in Atenco V. México](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371, para. 171.

23 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 13; African Commission on Human and Peoples’ Rights, [Guidelines on Freedom of Association and Assembly in Africa](#), para. 3; Inter-American Commission on Human Rights, [Protest and Human Rights](#) (2019), para. 295.

24 Article 11 of the African Charter simply recognizes that “every individual shall have the right to assemble freely with others.”

25 ECtHR, [Christian Democratic People’s Party v. Moldova](#) (No.2), Judgment of 2 February 2010, para. 23.

26 ECtHR, [Kudrevičius and Others v. Lithuania](#) [GC], 15 October of 2015, para. 92, and [Schwabe and M.G. V. Germany](#), 1 December 2011, para. 103.

27 African Commission on Human and Peoples’ Rights, [Guidelines on Freedom of Association and Assembly in Africa](#), para. 70.

ful.”²⁸ In line with the ECtHR’s jurisprudence, the Committee has stressed that in order to characterize the conduct of participants as violent, the authorities must “present credible evidence that, before or during the event, those participants are inciting others to use violence, and such actions are likely to cause violence; that the participants have violent intentions and plan to act on them; or that violence on their part is imminent.”²⁹

Human rights courts and bodies have stressed that isolated acts of violence do not render an assembly as a whole non-peaceful.³⁰ The ECtHR has also explained that “an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour.”³¹

Actions that cause disturbance or are obstructive are equivalent to violent or non “peaceful”. The ACHPR has indicated that “peaceful” must 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.”³² The UN HRC has indicated that “mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to ‘violence.’”³³ The Committee has clarified that this violence “typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property.”³⁴

There are important decisions by constitutional and supreme courts that have also clarified that disturbance and violence should not be equated when assessing the peacefulness of an assembly. For instance, Colombia’s Constitutional Court has affirmed that the “peaceful” or “non-violent” nature of an assembly is a *sine qua non* condition for its constitutional protection. The Court has clarified that reference to “non-violence” should not be interpreted so as to deny the fact that assemblies necessarily entail some form of alteration to the public order. The contrary, affirmed the Court, “would negate the disruptive nature of protest.”³⁵ Similarly, Colombia’s Supreme Court has clarified that “not every act of defiance constitutes violence and, in any event, a defiant conduct is under the protection of the right to protest.”³⁶ The Court has stressed that even if an assembly can be deemed violent “it does not allow law enforcement authorities to use force disproportionately nor cause injuries nor carry out arrests without full compliance with the law.”³⁷ Similarly, the Constitutional Court of Uganda has affirmed that “provided that a protest or public gathering remains peaceful, it does not matter that it may be disruptive or even inconvenient.”³⁸

28 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 17.

29 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 19.

30 African Commission on Human and Peoples’ Rights, [Guidelines on Freedom of Association and Assembly in Africa](#), para. 70 b).

31 ECtHR, [Case of Laguna Guzman v. Spain](#), 2020, para. 35.

32 African Commission on Human and Peoples’ Rights, [Guidelines on Freedom of Association and Assembly in Africa](#), para. 70 a).

33 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 15.

34 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 15.

35 Constitutional Court of Colombia, [Sentencia C-009/18](#), para. 34.

36 Supreme Court of Colombia, [Soledad María Granda Castañeda and Others v. Presidency of Colombia and Others](#), (2020), p. 79.

37 Supreme Court of Colombia, [Soledad María Granda Castañeda and Others v. Presidency of Colombia and Others](#), (2020), p. 79.

38 Constitutional Court of Uganda, [Human Rights Network Uganda v. Attorney General](#), p. 21.

3. Importance of the right to freedom of peaceful assembly

Human rights bodies and regional and domestic courts have assigned special value to the right to freedom of peaceful assembly, as a fundamental right, which is an essential component of democratic systems and indispensable to the realization of other human rights. The UN HRC has indicated that “the right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.”³⁹ The UN HRC also observed that the right of peaceful assembly is “a valuable tool that can and has been used to recognize and realize a wide range of other rights.”⁴⁰

The importance of the right to peaceful assembly has been stressed on several occasions by the ECtHR, which has reiterated that the right is “one of the foundations of a democratic society, and, like the right to freedom of expression is one of the foundations of such a society.”⁴¹ Similarly, IACtHR has also recognized that “the right to assembly is a fundamental right in a democratic society,”⁴² that allows “individuals to claim the protection of other rights.”⁴³

Domestic courts have placed special emphasis on the value of the right to peaceful assembly in advancing the rights of marginalized and disenfranchised members of society, providing them with avenues to participate in the political process (often captured by elites) and advocate for the issues that matter to them. For example, the Supreme Court of India has indicated that the right to assembly

“is crucial in a democracy which rests on participation of an informed citizenry in governance. This right is also crucial since it strengthens representative democracy by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from State authorities as well as powerful entities. This right is crucial in a vibrant democracy like India but more so in the Indian context to aid in the assertion of the rights of the marginalised and poorly represented minorities.”⁴⁴

In similar terms, the Constitutional Court of Colombia has emphasized that the right to peaceful assembly is a fundamental right. For this Court, protection of this right is essential to ensure the existence of pluralistic and democratic society. Accordingly, this right constitutes “a useful mechanism for democracy and to achieve full compliance with the social pact, because it is often through these means of participation that citizens belonging to historically marginalized groups can voice their concerns and express their grievances.”⁴⁵

39 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 1.

40 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 2.

41 ECtHR, [Kudrevičius and Others v. Lithuania](#) [GC], Judgment of October 15, 2015, para. 91.

42 IACtHR, [López Lone and Others v. Honduras](#). Preliminary Objections, Merits and Reparations. Judgment of October 5, 2015. Series C No. 302, para. 167, and IACtHR, [Case of Women Victims of Sexual Violence in Atenco v. México](#), para. 171.

43 IACtHR, [Case of Women Victims of Sexual Violence in Atenco v. México](#), para. 171.

44 Supreme Court of India, [Mazdoor Kisan Shakti Sanghatan vs Union of India](#) on 23 July, 2018, (2018) 17 SCC 324, para. 53.

45 Constitutional Court of Colombia, [Sentencia C-009/18](#), para. 34.

The Constitutional Court of South Africa has observed that “people who lack political and economic power have only protests as a tool to communicate their legitimate concerns. To take away that tool would undermine the promise in the Constitution’s preamble that South Africa belongs to all who live in it, and not only a powerful elite. It would also frustrate a stanchion of our democracy: public participation.”⁴⁶ Moreover, it affirmed that “the right to freedom of assembly enables people to exercise or realize other rights. To limit the right to freedom of assembly therefore poses a real risk of this proliferating into indirect limitations of other rights.”⁴⁷

4. Close link to the right to freedom of opinion and expression

Courts and human rights bodies have recognized that the right to freedom of peaceful assembly is closely linked to the right to freedom of expression. While the rights to peaceful assembly and of expression are two separate and autonomous rights, courts recognize that they are mutually reinforcing and their scope of application generally intersect; including recognizing that the protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly.⁴⁸

For instance, the UN HRC has indicated that “the right of peaceful assembly is more than just a manifestation of freedom of expression,” however, assemblies often have an expressive element, “and the rationale for the recognition of these two rights and the acceptable restrictions overlap in many ways.”⁴⁹ The Committee has stressed that “[t]he rules applicable to freedom of expression should be followed when dealing with any expressive elements of assemblies.”⁵⁰ In particular, “restrictions on peaceful assemblies must thus not be used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination. They should not be used to prohibit insults to the honour and reputation of officials or State organs.”⁵¹

Similarly, the ECtHR has affirmed in its caselaw that the right to peaceful assembly (Article 11) must be considered in the light of the right to freedom of expression (Article 10), whenever “the aim of the exercise of freedom of assembly is the expression of personal opinions as well as the need to secure a forum for public debate and the open expression of protest.”⁵² The Court has expressed that the link between the two rights is especially close when the authorities have interfered with the right to freedom of peaceful assembly in reaction to the views held or statements made by participants in a demonstration.

46 Constitutional Court of South Africa, *Mlungwana and Others v The State and Another* [2018] ZACC 45, para. 69

47 Constitutional Court of South Africa, *Mlungwana and Others v The State and Another* [2018] ZACC 45, para. 70.

48 IACtHR, *López Lone and Others v. Honduras*. Preliminary Objections, Merits and Reparations. Judgment of October 5 2015. Series C No. 302, para. 167.

49 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 99.

50 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 49.

51 Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 49.

52 ECtHR, *Kudrevičius and Others v. Lithuania* [GC], Judgement of 15 October 2015, para. 92.

While the IACtHR has observed that each of these rights has its own scope and meaning, it has also recognized that the rights to assembly (Article 15) and expression (Article 13) “are intrinsically related” and that a violation of the right to assembly could also affect the right to freedom of expression.⁵³ The ACHPR has also recognized that States must fully respect in law and practice the right to freedom of expression through assembly. In particular, it has found that “States shall not discriminate among assemblies based on the expression involved. The expression aimed at and in and through assemblies is protected by the right to freedom of expression, and includes expression that may give offense or be provocative.”⁵⁴

5. Positive obligations

International and regional human rights law recognizes that the right to freedom of peaceful assembly encompasses both negative and positive obligations. States must not only refrain from applying undue restrictions on the right to assemble peacefully. They also must adopt measures to secure the effective enjoyment of that right.

With regards to the positive obligations, the UN HRC has indicated that States are obliged to “facilitate peaceful assemblies and to make it possible for participants to achieve their objectives.”⁵⁵ This includes the obligation to promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. It also requires States to protect participants against undue interference or violence by non-State actors, including members of the public, counterdemonstrators, and private security providers.⁵⁶

Similarly, the ACHPR has indicated that State Parties to the Charter are also charged with positive obligations, according to which States are required not only to refrain from violating human rights but also to undertake adequate measures to guarantee right holders within their jurisdictions the fulfillment and enjoyment of their rights. In a case concerning violence against women journalists covering protests, the Commission found that the police failed to protect a group of women journalists and “not only did not intervene while the victims were being brutally assaulted but encouraged and participated in the assaults.”⁵⁷

6. Restrictions on the right to freedom of assembly

Throughout the case law reviewed in this paper, courts and human rights bodies have examined a wide range of restrictions affecting the right to peaceful assembly. They typically involve measures taken before, during or after a gathering. Some restrictions relate to the conditions placed on the exercise of the right to freedom of assembly. For example, mandatory notification and authorization procedures, prohibition

53 IACtHR, *Case of Women Victims of Sexual Violence in Atenco v. México*, para. 173.

54 African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa* (2017), paras. 77-82.

55 Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, CCPR/C/GC/37, para. 24.

56 Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, CCPR/C/GC/37, para. 24.

57 African Commission on Human and Peoples' Rights, *Egyptian Initiative for Personal Rights v. Egypt*, 323/06 (2013).

or bans, rules related to the time, place and manner of an assembly or content-based restrictions, such as prohibition to display banners. Other restrictions comprise enforcement measures such as crowd-control, dispersal of an assembly, arrest of participants and/or subsequent penalties.

As indicated previously, international human rights law recognizes that the right to freedom of assembly is not absolute and it can be subject to restrictions. However, it provides that those restrictions must be “prescribed by law”, pursue one or more legitimate aims, and be “necessary in a democratic society”.

When examining compliance with these requirements, the ECtHR has found that “enforcement of rules governing public assemblies cannot become an end in itself”⁵⁸ and authorities must demonstrate that restrictions imposed are necessary and proportional. Furthermore, the ECtHR and the IACtHR have held that events related to political life in the country must enjoy strong protection under the right to peaceful assembly. The ECtHR, for example, has subjected content-based restrictions on the freedom of assembly to the most serious scrutiny.⁵⁹ The IACtHR has stressed that demonstrations and protests aimed at defending democracy and opposing the breakdown of the constitutional order have the highest protection under the American Convention.⁶⁰

B. The right to freedom of opinion and expression

The right to freedom of opinion and expression is recognized in Article 19 of both the Universal Declaration of Human Rights and the ICCPR. It is also established in regional human rights treaties: Article 10 of the [European Convention on Human Rights](#); Article 13 of the [American Convention on Human Rights](#), and Article 10 of the [African Charter on Human and Peoples’ Rights](#). These provisions protect in similar terms the right of individuals to seek, receive and impart information and ideas through any media of their choice, including orally, in writing or in print, in the form of art, or through any other media.

The right to freedom of opinion and expression is a central pillar of free and democratic societies, indispensable to the creation of a vibrant and pluralistic public discourse and the realization of the principles of transparency and accountability.⁶¹ In the context of protests, the right to freedom of expression is most essential, ensuring the broadest dissemination of ideas and a well-informed and empowered public.

Under international and regional human rights law, States are required to respect, protect, and fulfill the enjoyment of the right to freedom of expression. This means that States must not only abstain from imposing undue restrictions to the right, but also to ensure the right is given effect to in the domestic law and practice, and that persons are protected from any acts by private persons or entities that would impair the enjoyment of the right.

58 ECtHR, [Case of Elvira Dmitriyeva v. Russia](#), 30 April 2019, para. 82, [Case of Lashmankin and Others v. Russia](#), February 7, 2017, para. 449.

59 ECtHR, [Case of Navalnyy v. Russia](#) [GC], Judgment of 15 November 2018, para. 136

60 IACtHR, [Case López Lone and Others v. Honduras](#), Preliminary Objections, Merits and Reparations. Judgment of October 5, 2015. Series C No. 302, para. 167 and [Kudrevičius and Others v. Lithuania](#) [GC], Judgment of 15 October 2015, para. 92.

61 Human Rights Committee, [General Comment 34 \(2011\) Article 19: Freedoms of opinion and expression](#), CCPR/C/GC/34, 11 September 2011, paras. 2-3.

1. Protests under the right to freedom of expression

As indicated above, when it comes to protests there is no clear and dividing line between the right to peaceful assembly the right to freedom of expression. The right to freedom of expression equally protects the ability of individuals to join others in protests and demonstrations. Protests have been broadly recognized as expressions of opinion.⁶² This right also offers protection to associated activities which are integral to making protests happen, including promotional and documenting activities. Moreover, it ensures the wide dissemination and exchange of ideas and viewpoints around protests through unhindered media coverage and access to digital technologies.

For instance, the ECtHR has interpreted Article 10 of the European Convention to apply to protests. Throughout its caselaw, it has stated that “protests can constitute expressions of opinion within the meaning of Article 10.”⁶³ In particular, the Court has noted that “protests against hunting involving physical disruption of the hunt or a protest against the extension of a motorway involving a forcible entry into the construction site and climbing into the trees to be felled and onto machinery in order to impede the construction works were found to constitute expressions of opinion protected by Article 10.”⁶⁴ The Court has also found that shouting of slogans, raising banners and placards and distributing pamphlets during protests is also covered by the right to freedom of expression.⁶⁵

In deciding whether the right to freedom of expression applies to a case concerning protests, the ECtHR has considered the “nature of the act or conduct in question, in particular of its expressive character seen from an objective point of view, as well as of the purpose or the intention of the person performing the act or carrying out the conduct in question.”⁶⁶

Similarly, the IACtHR has affirmed that in order to examine an application under Article 13 (freedom of expression) it is necessary to demonstrate that the alleged interference goes beyond the intrinsic content of the right to assemble.⁶⁷ The IACtHR has attached importance to the fact that the authorities have interfered with the right to freedom of peaceful assembly based on the messages or expressions of the participants of the demonstration.⁶⁸ Other courts draw no distinction between the right to peaceful assembly and the right to freedom of expression in the contexts of peaceful protests. For example, in a case concerning sanctions imposed on protesters for intentionally blocking roads, the Supreme Court of the United Kingdom held that the distinction between the two rights was “largely immaterial” and that the outcome of this case “will be the same under both articles.”⁶⁹

62 ECtHR, *Case of Yezhov and Others v. Russia*, Judgment of 29 June 2021, para. 27.

63 ECtHR, *Case of Yezhov and Others v. Russia*, para. 26

64 ECtHR, *Case of Yezhov and Others v. Russia*, para. 26

65 ECtHR, *Case of Açık and Others v. Turkey*, no. 31451/03, § 40, 13 January 2009

66 ECtHR, [Guide on the case-law of the European Convention on Human Rights on Mass Protests](#) (Last update: 31.08.2022), para. 120.

67 IACtHR, *Case of Women Victims of Sexual Violence in Atenco v. México*, para. 173.

68 IACtHR, *Case of Women Victims of Sexual Violence in Atenco v. México*, para. 173.

69 Supreme Court of the United Kingdom, *Director of Public Prosecutions (Respondent) v Ziegler and others (Appellants)*, 2021, para. 61.

Explaining the connection between the right to freedom of expression and the right to peaceful assembly, the Supreme Court of India indicated that:

Article 19, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights, i.e., the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b). These rights, in cohesion, enable every citizen to assemble peacefully and protest against the actions or inactions of the State. The same must be respected and encouraged by the State, for the strength of a democracy such as ours lies in the same. [...]. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms.⁷⁰

2. Restrictions on the right to freedom of opinion and expression in the context of peaceful protests

Common restrictions to the right to freedom of expression in the contexts of peaceful protests are measures preventing journalists and media outlets from doing their work, including censorship and violence against journalists; internet shutdowns and measures blocking access to internet before, during and after protests, and sanctions for shouting, displaying banners and making speeches made during protests or for supporting protests on social media.

As in the case of the right to peaceful assembly, in order to be admissible, restrictions to the right to freedom of expression must be “provided by law.” They may only be imposed for one of certain specific grounds set out in those instruments (generally, the respect of the rights or reputations of others, and the protection of national security or of public order (*ordre public*), or of public health or morals). And further, the restrictions must conform to the strict tests of necessity and proportionality. The applicability of these conditions is assessed on a case-by-case basis.

For instance, the ECtHR has stressed that “campaigning” for participation in a peaceful assembly that had not been duly approved did not in itself justify the imposition of sanctions and that the Court must examine whether the restriction is necessary in a democratic society, having regard to the facts and circumstances of the case. In particular, the ECtHR has found that if the only justification for the restriction is the need to punish unlawful conduct, the restriction would violate the right to freedom of expression.⁷¹

⁷⁰ Supreme Court of India, [Mazdoor Kisan Shakti Sanghatan vs Union of India](#) on 23 July, 2018, (2018) 17 SCC 324), para. 53.

⁷¹ ECtHR, [Case of Elvira Dmitriyeva v. Russia](#), 30 April 2019, para. 77-90.

III. Selected caselaw

This section presents a selection of rulings and decisions concerning peaceful protests issued by domestic courts as well as international and regional human rights protection bodies. The decisions are organized around issues and themes most commonly addressed in protest litigation. They have helped develop important domestic, regional and international principles and standards on the right to peaceful assembly and of association and are crucial for the understanding overall trends in protest caselaw. This is not an exhaustive list of cases and is intended only to serve as a reference tool.

Prohibition, authorization and notification regimes

One key issue of public protests cases concerns government decisions banning or refusing to authorize assemblies. In the decisions selected here, domestic courts laid down important standards on the compatibility of bans and authorization regimes with the rights to freedom of peaceful assembly and expression.

1. *Human Rights Network Uganda v. Attorney General* (2020): The Ugandan Constitutional Court declared a provision of the Public Order Management Act (POMA) unconstitutional as it granted arbitrary discretionary powers to government authorities to prohibit, prevent and order the dispersal of public gatherings. The Act – enacted in 2013 after the Constitutional Court had struck down a similar provision in 2005 – was challenged by a group of non-governmental organizations, a Member of Parliament and a prominent church leader. While recognizing that protecting public order is necessary and that laws which regulate public order are justifiable in democracies, the Court stressed that this regulation cannot allow for the suppression of public gatherings or require prior permission for a public gathering. The Court reiterated that “the police have absolutely no legal authority to stop the holding of public gatherings on grounds of alleged possible breach of the peace”, and held that a blanket prohibition on gatherings which have not obtained prior authorization is unconstitutional. The Court stressed that State’s duty to prevent breaches of the peace during peaceful public gatherings does not entitle law enforcement to “wantonly disperse public gatherings or prohibit meetings of groups agitating for political causes that are opposed to the government of the day”. The Court rejected the notion that the police have extraordinary powers to determine that a particular public gathering should not be allowed because it will result in a breach of peace. It noted that if police anticipate that a public gathering may result in a breach of the peace their duty is to “provide reinforced deployments and not to prohibit the planned gathering altogether” and that such a duty is not onerous on the police. More info [here](#).

2. *Shaikh v. The State of Maharashtra* (2020): The Bombay High Court set aside orders issued by police and a magistrate which had prohibited peaceful protests against the Citizenship Amendment Act (CAA) in India. The police had refused the application for permission to hold daily peaceful protests and referred it to the magistrate, who also decided to ban all protests, including “sloganeering, singing, beating drums”, citing concerns over threats to law and order. The High Court examined whether the magistrate had the authority to issue such an order to prevent public disorder. The Court found the Constitution of India protected the right of individuals to agitate and

raise their grievances against laws. The High Court held that “it is not open to the Court to ascertain whether the exercise of such right will create a law and order problem. That is the problem of a political government. In such cases, it is the duty of the Government to approach such persons, have talk with them and try to convince them.” It held that a “possible problem of law and order cannot be considered by the Court particularly for the reason that it involves the exercise of a fundamental right.” The High Court considered that on the contrary, authorities should be sensitive that if people are not allowed to express their grievances peacefully and defend their rights, “the possibility of use of force is always there and the result will be violence, chaos, disorder and ultimately the danger to the unity of this country.” The Court held that the orders were illegal and granted permission for the protests as well as police protection. More info [here](#).

3. *Attorney General v. Trapence* (2019): The Supreme Court of Appeal of Malawi denied an application by the Attorney General for an injunction temporarily banning demonstrations against the 2019 presidential election results. After a contentious presidential election in May 2019, mass demonstrations spread around the country. The Attorney General characterized these demonstrations as violent and argued that until a way of dealing with the “violence and criminality currently surrounding these demonstrations” is found, the organizers should be prevented from holding further protests. The Attorney General claimed that the police force lacked the necessary resources to manage these large demonstrations. The Court reiterated its doctrine that “that banning demonstrations especially by unilateral executive action is most likely legally untenable.” It reminded that in Malawi protesters do not need to “ask for and be given permission to demonstrate.” The Court rejected the idea that banning protests was an appropriate way to address possible violence and criminality in demonstrations or police’s alleged lack of resources to manage them. The Court stressed that ruling otherwise would allow the police to “benefit from their own inefficiencies.” More info [here](#).

4. *Joseph Boyd v. Ineos Upstream Limited* (2019): The England and Wales Court of Appeal held that while there was no conceptual or legal prohibition on obtaining an injunction to restrain a category of unnamed defendants from protesting, a court should be “inherently cautious” before granting them. Ineos Upstream Limited and its business partners secured some land to conduct gas exploration using fracking. Concerned with likely protests, the company requested an injunction to restrain several categories of “persons unknown” from committing unlawful acts associated with such protests, including trespass, interference with the right of way, harassment, and intimidation. A first instance court granted the injunction and there was an appeal. The Appellate Court lifted the injunction for some categories of “persons unknown”. In particular, the Appellate Court considered that the first instance judge’s decision to prohibit “unknown defendants” from coming together to obstruct free passage along a public highway by “slow walking” in front of vehicles or otherwise unlawfully obstruct the highway to cause delay to Ineos was “too broad and unclear”. The Appellate Court explained that the first instance court’s reasoning failed to the extent to which “slow walking” would result in damage, or if the court could even assess whether the “slow-walker” intended it. According to the Appellate Court, this lack of clear terminology created a chilling effect on the legitimate exercise of the right to peaceful assembly. The Appellate Court also kept the injunction for other defendants, pending restrictions on the length of the injunction and a new

assessment of the risk that the supposed unlawful acts will take place. More info [here](#).

5. *DARE v. Saunyama N.O* (2018): The Zimbabwe Constitutional Court held that a provision in the Public Order and Security Act, which allowed police officers to issue blanket bans on future demonstrations in specific geographical areas for up to one month, was an unjustifiable limitation on the right to demonstrate and present petitions. A Zimbabwean NGO challenged the provision after a police officer in the Harare Central Police District prohibited demonstrations in the district for a period of two weeks in September 2016. The Court found that the provision had the potential of “negating or nullifying the rights not only completely but perpetually” and was an unfair and irrational limitation on the right as it allowed police officers to pre-emptively prohibit all demonstrations, irrespective of their nature or scope. More info [here](#).

6. *Iyakkam v. State of Tamil Nadu* (2017): The High Court of Madras ordered the Respondent Deputy Commissioner of Police to allow the Petitioner to hold a public meeting against corruption but ruled that this could be subject to reasonable restrictions. The Respondent had rejected the request because he believed that the meeting was intended to incite public disorder. The Court reasoned that the Petitioner had the right to peacefully assemble without arms and to conduct a public meeting to promote its principles under the Constitution of India and that the Respondent authority had a duty to protect against untoward incidents during the meeting. The High Court considered that the Respondent’s reasoning for rejecting the Petitioner’s request was not justified for the simple reason that the police department had been created specifically for the purpose of tackling problems after they happened. If the Respondent was of the view that incitement to public disorder was intended, “adequate protection could be extended during the course of the meeting to ensure that such incidents were controlled.” More info [here](#).

Notification systems requiring that those organizing a peaceful assembly must inform the authorities in advance are common throughout the world and are considered a better approach than authorization regimes. In the example below, the Supreme Federal Court in Brazil provided important interpretation on the manner and goals of notification regimes to be compatible with the right to peaceful assembly.

7. *SINDIPETRO AL SE v. Office of the General Counsel for the Federal Government* (2020): The Supreme Federal Court in Brazil held that the dissemination of information about a planned protest serves as sufficient prior notice to law enforcement authorities. A group of social movements planned a protest on a Brazilian highway and advertised the protest in their organizational material. The Federal Highway Police were aware of the planned protest and informed the General Counsel for the Federal Government, which then sought an order to ban the protest. Although the ban was granted, the social movements went ahead with the protest and then sought a repeal of the ban. That request for repeal was denied and the social movements were fined for having carried out a banned protest. After they were fined, they filed a petition before the Supreme Federal Court. The Court emphasized the importance of public participation and the reality that this will lead to a moderate impact on the state. The Court held that the protest and the manner of notification was protected by the constitutional right to a peaceful protest. More info [here](#).

Orders requiring participants or organizers of protests to pay fees or cover the costs of policing or security, cleaning, or other public services associated with the gathering can also burden protesters amounting to a serious impediment to carrying out protests. In the example below, the High Court in Johannesburg ruled these measures violate the right to peaceful assembly and protest.

8. *Right to Know Campaign v. City Manager of Johannesburg Metropolitan Municipality* (2022): The High Court in Johannesburg, South Africa held that the levying of fees for planned protests was irrational and unjustifiably limited the right to protest. After the convenor of a planned protest was charged a nominal fee of R297 (approx. US\$18) by the City of Johannesburg's police department, two civil society organizations approached the Court, seeking a declaration that the policy governing the levying of these fees was unconstitutional. The Court held that the reason given by the city that the fees contributed to the costs of policing the protests was irrational. It also referred to international jurisprudence in finding that the levying of any fees is an unconstitutional limitation to the right to protest and ignores the State's positive obligation to provide services to facilitate the enjoyment of the right. More info [here](#).

Restrictions based on location, time or manner of protests

Another frequent restriction placed on protests relates to the time, place or manner of assemblies. These restrictions have been amply addressed by the ECtHR in its caselaw. The decisions selected here represent a snapshot of the court's jurisprudence on this subject.

9. *Case of Ibragimova v. Russia* (2022): The ECtHR found that Russia had violated the freedom of expression right of Miss Naylya Razinova Ibragimova, who had protested the conviction of punk group Pussy Riot members in August 2012. The plaintiff had stood alone on a corner of a public square holding a sign in support of Pussy Riot members and wore a balaclava, following the famous style of the group she wanted to support. She was later fined for violating the Public Events Act, that prohibits hiding one's face in public. The Court considered that the national courts had failed to adequately consider the plaintiff's freedom of expression rights, the symbolic nature of the balaclava use (in the context of her protest) and her lack of intention of hiding her identity from authorities. More info [here](#).

10. *Kablis v. Russia* (2019): The ECtHR held that a general ban on holding a demonstration in the city's public square, and ordering the removal of his online posts about it, violated his rights to freedom of expression and public assembly, protected by Articles 10 and 11 of the European Convention on Human Rights, respectively. In September 2015, following news that Russian law enforcement launched a criminal investigation into senior officials of the Komi Republic, north-east Russia, Mr. Kablis sought permission from the municipal authorities to hold a public gathering for around fifty persons in the main town square. He also published three blog entries and a social media post about the gathering, the criminal investigation, and other political topics. The authorities refused his request, arguing that the public square fell within the area in the immediate vicinity of the Constitutional Court of the Komi Republic, where the holding of public events was prohibited by

decree. Authorities also blocked his blog, and forced the social media company to delete his account. Mr. Kablis unsuccessfully complained against the refusal and the blocking in Russian courts. The ECtHR reiterated its previous finding in the case of *Lashmankin and Others v Russia* that a general ban under Russia's Public Events Act "on holding public events in the vicinity of court buildings" is incompatible with the right to peaceful assembly, taking into account its absolute nature coupled with the local executive authorities' wide discretion in determining what is considered to be "in the immediate vicinity." The ECtHR did not see any reason to reach a different conclusion in this case and ruled that the refusal to allow Mr. Kablis to hold a demonstration at his preferred location because it was in the vicinity of the Constitutional Court of the Komi Republic could not, therefore, be regarded as being "necessary in a democratic society" within the meaning of Article 11." The Court also held that the blocking equated to a prior restraint and the authorities failed to provide relevant and sufficient reasons for interfering with his right to freedom of expression. More info [here](#).

11. *Lashmankin v. Russia* (2017): The ECtHR held that Russia violated the applicants' rights to freedom of assembly and an effective remedy, Articles 11 and 13 respectively, when it imposed a number of restrictions on the location, time or manner of assemblies and provided no means of allowing a judicial remedy against the restrictions prior to the assemblies taking place. The Russian authorities had imposed restrictions on separate assemblies proposed by the fifteen applicants to commemorate variously the killing of a famous human-rights lawyer and a journalist, to protest against a draft law prohibiting adoption of children of Russian nationality by U.S. citizens, and another to promote the rights of homosexuals. The Court reasoned that there had been an interference with the applicants' rights, because the refusals of the authorities to approve the location, time or manner of conduct of public events planned by the applicants had the effect that the applicants either cancelled the events or decided to go ahead regardless of the risk of dispersal, arrest and prosecution. The Court held that this interference could not be justified. The Court found that a broad statutory discretion empowering the authorities to propose a change to the location, time, or manner of conduct of public assemblies did not meet the "quality of law" requirement, because the law lacked adequate and effective legal safeguards against its arbitrary and discriminatory use. The Court also found that the authorities had not given relevant and sufficient reasons for their proposals to change the location, time or manner of conduct of the applicants' public events. The automatic and inflexible application of the time-limits for notification of public events, without taking account of public holidays or the spontaneous nature of an event, was not justified. Furthermore, by dispersing the applicants' public events and arresting participants, the authorities had failed to show the requisite degree of tolerance towards peaceful, albeit unlawful, assemblies, in breach of the requirements of Article 11 § 2. More info [here](#).

12. *Sáska v. Hungary* (2012): The ECtHR held that the refusal of a Hungarian police department to authorize a demonstration violated the right to freedom of assembly. After an individual's request to hold a demonstration in front of the Hungarian Parliament was refused on the grounds that it could impede the operations of Parliament, the individual reviewed the decision in a domestic court. That court accepted the police explanation for their refusal to authorize the demonstration and he then approached the ECtHR. The court found that the government had not provided "rele-

vant and sufficient reasons” for why the demonstration would cause an interference in Parliament’s operations and held that the refusal was not necessary in a democratic society. Full analysis [here](#).

Preventative arrest and extra-legal measures to deter participation

Preventative detentions and extra-legal measures to deter participation in peaceful protests have become increasingly common worldwide. The decisions selected here show how courts can help put an end to this type of undue restriction.

13. *Delia v. Minister for Justice of Malta Owen Bonnici* (2020): Malta’s First Hall of the Civil Court in its Constitutional Jurisdiction held that the systematic destruction by government workers of a memorial in honor of slain journalist Daphne Caruana Galizia, constituted a violation of protesters’ right to freedom of expression. Ever since the day after Caruana Galizia was murdered, activists, journalists and citizens have participated in a sustained campaign calling for justice which included maintaining a memorial to her in front of a national Monument and organizing monthly protests. A government minister had ordered the routine “cleaning” or removal of all the banners, flowers, signs, and related objects in an alleged effort to protect the national monument. The Court held that the Minister’s order was arbitrary and had the specific purpose of hindering ongoing protests. The Court noted that the location of the memorial in front of the Court of Justice, where follow-up investigations into the murder were conducted, was directly relevant for the purpose of the protests. Further, the material was easily removable and did not damage the monument. Citing substantial case law from the ECtHR, the Court concluded that the order was not provided by law, did not pursue a legitimate aim, and was not necessary in a democratic society. In particular, the Court found that the real motivation for the unjustified removal of protest material was to hinder the continuation of the protests and not to protect a national Monument, as claimed by the authorities. Thus, the Court found a violation of Article 10 of the European Convention on Human Rights (freedom of expression) and Article 41 of the Constitution of Malta (protection of freedom of expression). More info [here](#).

14. *Case of Markovski and Muratovski* (2018): The Constitutional Court of the Republic of Macedonia held that the temporary detention of two political activists was a violation of their right to freedom of expression and constituted discrimination on the basis of their political affiliation. The activists had attempted to unfurl a banner with the text “Against war for profit” at a protest against public exhibition of military weapons in the “Macedonia” square when they were prevented from doing so and handcuffed by police officers. The Court applied domestic and European human rights law in finding that the interference with the activists’ rights was not necessary in a democratic society and was therefore impermissible. In particular, the Court found that the right to peaceful assembly protects the dissemination of messages which can shock or insult individuals who oppose the ideas and attitudes that the assembly aims to promote. The Court stated that any measure which infringes the exercise of freedom of assembly when there is no incitement to violence or threat to democratic principles serves to endanger democracy itself. In addition, the Court held that a lack of prior authorization cannot serve as a legitimate basis for dispersing a spontaneous gathering and

so such dispersal would constitute a disproportionate limitation of the right. The Court also found that the police officers had discriminated against the activists as members of the *left-wing* political party. The Court stated that the police had known that the two men were members of that party because they wore party symbols and that the police actions were carried out on the basis of that political affiliation, constituting a different and unequal treatment in comparison to other people present at the public event. More info [here](#).

15. *Protester v. The State of Mecklenburg-Vorpommern* (2017): The Federal Administrative Court of Germany ruled that the low-altitude overflight of a fighter jet over a protest camp in the run-up to the 2007 G8 summit encroached upon the right to freedom of assembly. In the context of the G8 summit in 2007, protesters had set up a camp from which they participated in several demonstrations. In support of the local police authorities, a fighter jet of the German armed forces performed a low-altitude flight over the protest camp to conduct aerial reconnaissance. The claimants asserted that the flight was unlawful, because it constituted a de-facto infringement upon its right to freedom of assembly under art. 8 German Basic Law. The claimants' action for a declaratory judgment was refused in the first and second instance. The Court ruled that although the protest camp was not an assembly as such, it was protected as a run-up activity necessary for a later participation in actual assemblies. The extreme noise level and the threatening sight of the surprising overflight created an effect of intimidation and deterrence on the persons in the run-up to a later participation in demonstrations. This effect was capable of discouraging persons to participate in the later assemblies. Therefore, it constituted a de-facto encroachment on the right to freedom of assembly. The Court reversed and remanded the case for a decision in accordance with its ruling to the appellate court. More info [here](#).

Legality (“prescribed by law” requirement)

In the following decisions, courts examined whether legislation imposing restrictions on protests conforms to requirements of legality, meaning that the law is accessible, precise, and foreseeable as to its effects.

16. *Deray Mckesson v. John Doe* (2020): The Supreme Court of the United States held in a *per curiam* decision that the Court of Appeals for the Fifth Circuit should not have adopted a novel “theory of personal liability” with First Amendment implications without seeking a “certified question” from the Louisiana Supreme Court in a case where the organizer of a protest was successfully sued for damages caused by an unknown third party to whom he was related only by mere participation in the protest. Petitioner Deray Mckesson appealed to the Supreme Court of the United States the decision of the Court of Appeals for the Fifth Circuit which had rejected his argument that he could not be liable under the First Amendment for damages made in the context of a social protest by an unknown third party when he led protesters to occupy the highway. The Court of Appeals for the Fifth Circuit held that Mckesson was not protected by the First Amendment for the “downstream consequences” of the unlawful obstruction of a highway that he allegedly directed. The Supreme Court of the United States held that under the unusual circumstances of this case, the

Court of Appeals for the Fifth Circuit should not have ventured into such a novel and uncertain area of tort liability with First Amendment repercussions without seeking guidance on the issue from the Louisiana Supreme Court. Accordingly, the Supreme Court of the United States vacated the decision of the Court of Appeals for the Fifth Circuit and ordered it to decide the case after making certified questions to the Louisiana Supreme Court. Full analysis [here](#).

17. *Moyo v. Minister of Police; Sonti v. Minister of Police* (2019): The South African Constitutional Court ruled that provisions in the Intimidation Act 1982 were an unconstitutional limit to the right to freedom of expression because they criminalized speech that did not constitute an “incitement of imminent violence”. Two individuals had been charged under the legislation in separate cases and challenged the constitutionality of the provisions. Although the High Court and the Supreme Court of Appeal had ruled that the provisions were constitutional and that it was necessary to criminalize intimidatory conduct, the Constitutional Court relied on the textual interpretation of the provisions and the right to freedom of expression in the Constitution. The Court acknowledged that the constitutional protection does not extend to expression that incites imminent violence but held that the provisions’ criminalization was broader than this and so criminalized protected expression. The Court declared the provisions invalid and ordered that the declaration of invalidity apply to all pending cases brought under the legislation. More info [here](#).

18. *Navalnyy v. Russia* (2018): The ECtHR ruled that the arrests of a Russian political activist for participating in irregular public gatherings were a violation of his right to freedom of assembly. All of the arrests arose from peaceful gatherings which had not been authorised, and involved sanctions ranging from fines to periods of imprisonment. All the domestic courts had held that the arrests were lawful and the activist then approached the ECtHR. The Court noted that there had been a pattern of similar cases in which Russian authorities had arrested individuals for participating in gatherings, and held that the Russian laws on requiring prior authorization were over broad and granted authorities too wide a discretion. It held that all the arrests of the activist had occurred after peaceful gatherings and had not served the purpose of preventing disorder or protecting the rights of others, and so had violated the right to freedom of assembly. Full analysis [here](#).

19. *Constitutionality of Articles 53 and 54 of the National Code of Police* (2018): The Colombian Constitutional Court rejected three constitutional challenges against a law 1801 of 2016, that regulates the exercise of the right to assembly and to demonstrate in public. The Court considered that these laws are a legitimate way of dealing with the tension between freedom of expression and other rights that emerge in the context of public demonstrations. The decision, however, reiterated that these laws must be understood within a broader case-law that is highly protective of freedom of expression and the right to assembly in public. Full analysis [here](#).

20. *Brown and Anor v. the State of Tasmania* (2017): The High Court of Australia examined challenges brought by two environmental activists against the Protesters Act, a law that placed several restrictions to protesters on forestry land. According to the plaintiffs, the law placed an undue burden on the freedom of political communication, which protects the free expression of political

opinion, including peaceful protest, and prevented any form of political, environmental, social, cultural or economic protest. Tasmania, in turn, conceded that the Protesters Act may place a slight burden on the freedom, but that it did not apply to the facts in this case. The state also asserted that the Act's sole purpose was to prevent any form of obstruction of a lawful business activity. The Court, however, deemed that the impugned sections of the Protesters Act were invalid and contrary to Australia's Constitution. According to the Court, the law did place an undue burden on the freedom of political communication as its ambiguity granted excessive police powers and the law went further than was reasonably necessary for its purpose. In particular, the Court found that the Protesters Act operated more widely than its purpose requires and was directed at preventing protesters being present within ill-defined areas in the vicinity of forest operations. The Court asserted that this "is likely to deter protest of all kinds and that is too high a cost to the freedom given the limited purpose of the Protesters Act." More info [here](#).

21. *Maseko v. the Prime Minister of Swaziland* (2016): The High Court of Swaziland held that certain sections of the Sedition and Subversive Activities Act No. 46 of 1938 and the Suppression of Terrorism Act 3 of 2008 infringed the fundamental rights to freedom of expression and association guaranteed by the Constitution. The Court further held, in light of both national and comparative jurisprudence on the validity of restrictions on free speech, that these rights are not absolute but that the Respondents had failed to show that the restrictions on the right to freedom of speech imposed in the Sedition and Subversive Activities Act were reasonable or justifiable. In particular, the Court found it unlawful to limit free speech for the sole purpose of shielding the government from criticism or discontent. The Applicants had been arrested on charges of sedition, subversion, and terrorism for their membership in an opposition movement, wearing its t-shirts and chanting slogans associated with the movement. More info [here](#).

22. *Hashman v. the United Kingdom* (1999): The Grand Chamber of the ECtHR held that the United Kingdom violated Article 10 of the European Convention on Human Rights on the ground that the legal basis for the imposition of an order on two individuals was not "prescribed by the law". Two protesters had attempted to disrupt a fox hunt and had been ordered to "keep the peace and be of good behaviour" in future. The domestic courts held that the protesters' behavior was "*contra bonos mores*" which justified a guarantee that they would abstain from disrupting the hunters. The Court held that as they had not been found to have acted unlawfully in their protest against the hunt, the order was one to refrain from undetermined and uncertain behavior and therefore was not foreseeable and not a justifiable limitation of the protesters' right to freedom of expression. More info [here](#).

Necessity and proportionality of sanctions

The most common issue addressed by the decisions compiled in this paper refer to the detention and the imposition of administrative and criminal sanctions against protesters for violating domestic law. The following decisions examine whether these measures meet requirements of necessity and proportionality in a democratic society. In particular, these decisions examine with particular scrutiny criminal sanctions, and notably, prison sentences imposed on protesters for non-violent conduct in their exercise of the rights

to peaceful assembly and expression.

23. *Bumbeș v. Romania* (2022): The ECtHR ruled that the Romanian Government violated the Applicant's freedom of expression by fining him for a short and peaceful protest held in front of a governmental building. The Applicant, Mr. Bumbeș, had handcuffed himself to the barriers blocking access to the parking area of the government's headquarters to protest a controversial mining project. The domestic courts found that his actions were unlawful as they amounted to a breach of public peace and that he had not provided the required three-day prior notice to stage a demonstration. The ECtHR found that while the interference was lawful and pursued a legitimate aim, it was not necessary in a democratic society. As the protest was peaceful, only involved four people and was quickly disbanded, the Court reasoned that the national authorities did not show sufficient tolerance for the political speech and placed disproportionate emphasis on the failure to give prior notice for the assembly. Hence, the Court held that there had been a violation of Mr. Bumbeș' right to freedom of expression under Article 10 interpreted in light of the right to freedom of assembly under Article 11. More info [here](#).

24. *Bodalev v. Russia* (2022): The ECtHR by majority opinion held the Russian governmental authorities responsible for violation of Mr. Bodalev's right to freedom of expression and right to participation in peaceful assemblies guaranteed under Articles 10 and 11 of the European Convention on Human Rights. The applicant took part in six different protest rallies against numerous causes such as denouncing election fraud, and preventing the removal of State-owned enterprises' revenues to offshore jurisdictions. For each of these demonstrations, either he was sentenced to detention or a fine was imposed on him by the Russian courts. In the Court's view, the Russian judges had failed to show that detention of the applicant pursued one or more legitimate aims and was "necessary in a democratic society". According to the court, mere participation in a non-notified demonstration without uttering any threats, engaging in reprehensible conduct or causing any harm, did not justify an interference with participant's right to freedom of peaceful assembly under Article 10 or 11 of the Convention. Full analysis [here](#).

25. *Genov and Sarbinska v. Bulgaria* (2021): The ECtHR held that conviction for hooliganism and fine for spray-painting a monument connected to the former communist regime in the context of political protests had been contrary to the European Convention of Human Rights, Art. 10. The application was brought to the ECtHR by two applicants, a popular blogger and a political activist, following their conviction by the national courts of Bulgaria for hooliganism and a fine for spray-painting a monument to "partisans" on the anniversary of the 1917 Bolshevik Revolution, in the context of nation-wide protests against a government mainly supported by the Bulgarian Socialist Party, the dominant political force during the communist regime. The national courts found that the applicants' intention was to scandalize society and demonstrate contempt toward it rather than to express views on a matter of public importance. The ECtHR held that there is no evidence that the applicants' act caused serious or irreversible damage to the monument, or that the removing of the spray-paint required significant resources. The ECtHR found that a criminal conviction of the applicants of hooliganism and the resultant fines was "not necessary in a democratic society"

within the meaning of ECHR, Art.10. More info [here](#).

26. *Mlungwana v. the State* (2018): The South African Constitutional Court held that a legislative provision that criminalized the failure to notify law enforcement of assemblies of more than fifteen people was an unjustifiable limitation on the right to freedom of assembly. Ten activists had been convicted under the Regulation of Gatherings Act, 1993 (Act) following their involvement in a 2013 protest for improved municipal services for which they had not notified the authorities. It was a requirement under the Act to notify the authorities if a protest included more than fifteen individuals. The activists intended for the protest to include under fifteen members, but more arrived than expected. The Court held that the threat of criminal sanctions created a “chilling effect” on the enjoyment of the right to freedom of assembly and found that the notification requirement in the legislation was not adequately tailored to achieve its purpose of enabling law enforcement to prepare for assemblies and gatherings that required policing. In doing so, the Court relied on its own jurisprudence as well as case law from the UN Human Rights Committee and the ECtHR. More info [here](#).

27. *Ogru v. Turkey* (2017): The ECtHR found that Turkey violated the right to freedom of assembly of the applicants, two of whom were human rights activists, as the administrative fines imposed on them for participating in several demonstrations had not been subject to an adequate judicial review. Domestic courts rejected the applicants’ appeals against the imposition of fines for breaching a gubernatorial decree restricting the places and times of demonstrations, holding that the fines were in conformity with the law. The ECtHR reasoned that the domestic courts had failed to carry out the required balancing act between the applicants’ right to freedom of assembly and the necessity and proportionality of the interference with that right, instead they had been satisfied to check the factual veracity of the charges against the applicants, namely that they had taken part in the demonstrations and therefore acted in breach of the decree. More info [here](#).

28. *Norin Catrیمان et al. v. Chile* (2014): The IACtHR ruled that a terrorism conviction imposed on members of the Mapuche indigenous people in Chile violated their right to freedom of expression. In 2001 and 2002, amid numerous demonstrations and social protests by members, leaders and organizations of the Mapuche people, a series of fires took place that caused material damage. They were attributed to members, traditional authorities and/or activists for the rights of the Mapuche indigenous people, and criminal proceedings were opened against eight individuals. The defendants were sentenced to prison with other accessory penalties for committing crimes of “terrorist arson”. Among the accessory penalties was the ineligibility to own, direct, or manage social media. The IACtHR found that the conviction amounted to a disproportionate restriction to the right to freedom of expression under the American Convention on Human Rights. The Court observed that the prosecution and conviction of the defendants under the anti-terrorist legislation and its excessive punishment had generated a chilling effect and could deter other members of the Mapuche community from exercising their right to freedom of expression since the legislation could create among them a “reasonable fear” of being prosecuted and convicted for participating in social protests. Consequently, the Court ordered Chile to annul the criminal convictions and remedy the victims. More info [here](#).

29. *Schwabe and M.G. v. Germany* (2011): The ECtHR held that the German government was responsible for violating two German nationals', Mr. Sven Schwambe and Mr. M.G.'s, right to freedom of peaceful assembly under Article 11 of the ECHR and awarded them EUR 3,000 (approx USD 3250). The applicants were arrested during the demonstrations organised against the G8 summit in Heiligendamm, Rostock in June 2007 since posters bearing the inscriptions "Freedom for all prisoners" and "Free all now" were found in the applicants' van. The Court remarked that the applicants gave a plausible interpretation of the inscriptions, namely that they directed towards police officers to release the prisoners instead of inciting prisoners themselves. The Court, in the instant case, noted that there was little scope for restricting applicants' right to protest since there was no intention of inciting others to violence and they only aimed at participating in a debate on issues of public interest such as the impact of the G8 summit and the effects of globalisation on the people. Therefore, the Court held that the applicants' detention was not proportionate and unreasonably interfered with their right to freedom of peaceful assembly under Article 11. Full analysis is [here](#).

Sanctions for roadblocking and intentional obstruction of highways

Roadblocking and the intentional obstruction of streets and highways are usual tactics of protesters around the world. This type of protests, while covered by the right to peaceful assembly and expression, is generally punished in domestic law and subject to dispersal and criminal penalties. The following are recent decisions from the Supreme Court of India and Supreme Court of the United Kingdom that examine this important issue and try to strike a balance between the right to protest and the other interests involved when roads are blocked by protesters.

30. *Director of Public Prosecutions v. Ziegler and others* (2021): The Supreme Court of the United Kingdom confirmed the District Court's decision that the arrest and prosecution of a group of protesters infringed their rights to free speech and assembly under Article 10 and 11 of the European Convention on Human Rights. The case concerned a group of demonstrators apprehended for lying down in the middle of a road on one side of the highway, blocking traffic towards an "Arms Fair" venue. The District Judge found deliberate, physical obstruction of the highway could be a lawful exercise of people's Article 10 and 11 rights and that, looking at the specific facts of the case, he believed the defendants' infringement of the rights of road users was much less significant than the infringement to the right to protest that would result from convicting and punishing them for that obstruction. For this reason, he found the defendants not guilty of all charges under the Highways Act. However, the prosecution appealed on a point of law, and the Divisional Court reversed the acquittals. The Supreme Court concluded that the prosecution failed to prove that the defendant's use of the highway was unreasonable, and therefore it overturned the Divisional Court decision, and the convictions were revoked. In its decision, the Court reminded that there should be a certain degree of tolerance to disruption to ordinary life, including disruption of traffic caused by the exercise of the right to freedom of expression or freedom of peaceful assembly. When assessing whether the conduct of the protestors could be considered a lawful excuse, the Court observed that the plaintiffs' action was intended to be a peaceful gathering and gave rise to no form of disorder; did not involve the commission of any offense other than the alleged section 137 offense;

was carefully targeted at vehicles heading to the fair and did not obstruct completely the highway; and, was of limited duration since the obstruction lasted close to 100 minutes. Additionally, since there were alternative routes available for vehicles making deliveries to the Excel Centre during the demonstration, there was no evidence of any significant disruption caused by the obstruction. The Court concluded that the appellants lawfully exercised their rights under Articles 10 and 11 and the prosecution failed to prove that the defendant's use of the highway was unreasonable. Thus, the appellants had a lawful excuse for the obstruction of the highway, and therefore, the protest could not be considered a criminal offense. More info [here](#).

31. *Amit Sahni v. Commissioner of Police* (2020): The Supreme Court of India held that an indefinite occupation of public ways by protesters is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions. The Court allowed an appeal brought by advocate Amit Sahni for the removal of a protest organized at Shaheen Bagh, a Delhi neighborhood, against the Citizenship Amendment Act and the National Register of Citizens. The appellant argued that the protest blocked the public way and caused grave inconvenience to commuters. The disputed area was completely occupied by tents on one side and a makeshift library, large model of India Gate and a big metallic three-dimensional map of India on the other. After Court-appointed mediation failed, the Court ruled that despite the existence of the right to peaceful protest against a legislation, public ways and public spaces cannot be occupied indefinitely and that the rights of protesters were to be balanced with other contrasting rights, in this case that of commuters. It considered that such protests and demonstrations expressing dissent must only be organized in designated places. It held that the rights to freedom of expression and protest under Article 19 of the Constitution are subject to reasonable restrictions pertaining to the sovereignty and integrity of India, public order and to the regulation by the concerned police authorities. More info [here](#).

Sanctions for unlawful conduct or civil disobedience

Protesters have historically engaged in peaceful unlawful conduct or civil disobedience to draw attention to their cause or disrupt activities they oppose and have often faced severe penalties for doing so. In its most recent General Comment 37 the UN HRC recognized the centrality of civil disobedience in protest movements and affirmed that “collective civil disobedience” is protected under the right to freedom of peaceful assembly,⁷² thus restrictions imposed on this type of conduct must meet requirements of legality, necessity and proportionality. In the cases presented here, all of them adopted over last three years, courts examine the extent of the protection afforded by the right freedom of assembly to civil disobedience and the obligations place upon the State. While the case-law on this issue is just evolving, it is noteworthy that the ECtHR has recognized that certain protest activities that are unlawful may be regarded as protected under “peaceful assembly” when conducted in “the absence of any violent intention or violent conduct”⁷³ and that if sanctions are imposed, they must fully comply with proportionality requirements.

⁷² Human Rights Committee, [General Comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#), CCPR/C/GC/37, para. 16.

⁷³ ECtHR, [Tuskia and Others v. Georgia, 2018](#), Judgment of 11 October 2018, para. 73.

32. *Ekrem Ca v. Turkey* (2022): The ECtHR overturned the decision of the Court of Cassation (appellate court in Turkey) which upheld the trial court decision for convicting the Applicants who participated in a non-violent, peaceful protest in a Courthouse in 2003. The ECtHR held that the interference with the Applicants' right of freedom of assembly and expression was pursuant to prescription under the Turkish domestic laws i.e., the Criminal Code and there was a need to curb the freedom in the interest of public order. In particular, the Court held that "in cases where the exercise of freedom of expression or association is combined with illegal conduct which is disrupting ordinary life and other activities to a degree exceeding that which is inevitable in the circumstances, the Contracting States enjoy a wide margin of appreciation in their assessment of the necessity of taking measures to restrict such conduct, which cannot enjoy the same privileged protection under the Convention as political speech or debate on questions of public interest or the peaceful manifestation of opinions on such matters. These considerations are equally valid in the context of the present case where the applicants staged their protest in a courthouse in combination with other acts that were, albeit non-violent, capable of seriously disturbing the orderly administration of justice." However, the Court affirmed that they "do not enjoy unlimited discretion to take any measure they consider appropriate, and it is for the Court to assess the nature and severity of the penalties imposed for conduct involving some degree of disturbance of public order." In the case, the Court found that the criminal prosecution and conviction of the Applicants for a long period and the pre-trial detention for merely participating in non-violent and peaceful protest was disproportionate. The Court set aside the Turkish Court decisions and concluded that the Applicants' rights under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms had been violated. Accordingly, compensation and costs were awarded to the Applicants. More info [here](#).

33. *R. v. Brown* (2022): The England and Wales Court of Appeal (Criminal Division) upheld a conviction for public nuisance against James Hugh Brown—who glued himself to the top of a plane at London City Airport to protest— while quashing his 12 months' imprisonment sentence and substituting it for four months one. The defendant considered that he was wrongly prosecuted for public nuisance (a common law offence) when his conduct fell squarely in the scope of other less severe statutory offenses, such as aggravated trespass. Brown also considered that his sentence was disproportionate. The Court considered that the defendant's conduct sought to cause major disruption and that it was correct to charge him with public nuisance. When analyzing the sentence's duration, the Court took into consideration that although the defendant's behavior was reprehensible, it took place amidst peaceful protests, which justified a shorter punishment. The Court also bore in mind the defendant's visual disability to reduce the sentence. More info [here](#).

34. *Case of Yezhov and Others v. Russia* (2021): The ECtHR considered that the freedom of expression right of three Russian nationals had been violated due to their conviction for public disorder during a political demonstration. The plaintiffs had taken part in a protest that included temporarily occupying government offices, barricading themselves in and throwing leaflets, fire-crackers, and waving flags outside a government building. The European Court considered that while their initial arrest and forceful removal from the government building was justified, the na-

tional courts had failed to provide “relevant and sufficient” reasons for the five-year sentence that had been laid down against the plaintiffs. Full analysis [here](#).

35. *EH v. Queensland Police Service* (2020): The District Court of Queensland resentenced the appellants, two young people who participated in a public protest against the impacts of climate change, who were charged with obstructing and trespassing on a railway, using a dangerous attachment device to interfere with transport infrastructure, and contravening a direction or requirement. In the first instance (Magistrates Court), the plaintiffs were sentenced to three months imprisonment. The District Court conceded that it was manifestly excessive because the objective gravity of the offense was incorrectly characterized, the appellants were first-time offenders who pleaded guilty at the first available opportunity, they had favorable antecedents, there was no violence or threat of violence, there was an absence of risk of physical harm to others, and there was no disruption of members of the public. The judge held that appellants should pay a single fine of \$1000. Full analysis [here](#).

Non-Discrimination

In many countries, demonstrations in support of LGBTQI+ people’s rights face severe restrictions and violence by police and counter-protesters. Leading caselaw by the ECtHR has rejected these restrictions as discriminatory. In particular, the ECtHR found that States have a positive obligation “to use any means possible, for instance by making public statements in advance of the demonstration to advocate, without any ambiguity, a tolerant, conciliatory stance as well as to warn potential law-breakers of the nature of possible sanctions”⁷⁴ and to “duly facilitate the conduct of the planned event by restraining homophobic verbal attacks and physical pressure by counter-demonstrators.”⁷⁵

36. *Berkman v. Russia* (2020): The ECtHR held that the arrest of a Russian LGBTI activist after attending a peaceful protest violated the activist’s right to freedom of assembly. The activist had been arrested after she had attempted to attend a meeting to commemorate an annual LGBTI awareness day. Before the meeting could begin, counter-protesters surrounded the activists, and the activist and twelve others were later arrested and charged with disorderly conduct. The activist’s case was dismissed by the domestic courts for lack of evidence but she filed a civil case, arguing that the police had failed to protect the activists from the counter-protesters and so failed to ensure the personal safety of the activists and that her arrest had violated her right to freedom of assembly. The domestic courts dismissed the case, and the activist approached the ECtHR. The Court emphasized the importance of States adopting positive measures to ensure the rights of minorities are protected, and held that the police had failed to facilitate the activists’ enjoyment of the right to freedom of assembly and that their conduct had exposed the activists to homophobic attacks. Full analysis available [here](#).

⁷⁴ ECtHR, Case of *Identoba and Others v. Georgia*, 2015, para. 99

⁷⁵ ECtHR, Case of *2020*, paras. 55-57.

37. *Bayev and others v. Russia* (2017): The ECtHR held that Russia had violated the right to freedom of expression and the prohibition against discrimination when it convicted three applicants who were charged with administrative offenses for their nonviolent demonstrations held in front of a school and library to counter the stigma associated with homosexuality. The Court rejected the government’s claims that the relevant legislative provisions were justified to protect the morals, health and the rights of others, specifically minors. It reasoned that states have an obligation to take into account developments in society such as the inclusion of same-sex relationships within the concept of “family-life”; that health would be better protected with the dissemination of education on single-sex relationships: and that by adopting the laws at issue “the authorities reinforce[d] stigma and prejudice and encourage[d] homophobia, which is incompatible with the notions of equality, pluralism and tolerance in a democratic society”. More info [here](#).

38. *Bączkowski and Others v. Poland* (2007): The ECtHR held that decisions by Polish authorities to refuse to authorize a march and assemblies protesting against discrimination was a violation of the right to freedom of assembly. Various organizations and individuals in Warsaw, Poland had applied to hold demonstrations to protest against discrimination against various minorities, including sexual minorities. The local authorities refused permission on the grounds that the organizers of the assemblies had failed to submit the relevant traffic control documents. Two appeal processes in Poland held that the refusals had been incorrect and violated freedom of assembly. The ECtHR considered comments about homosexuality made by the Mayor of Warsaw and found that they likely influenced the decision makers. It held that the refusals by public officials to allow the assemblies were not prescribed by law and were therefore an unjustifiable limitation of the right. Full analysis [here](#).

Protecting public health & reproductive rights

The protection of “public health” is one of the grounds for which restrictions to the rights to freedom of expression and peaceful assembly may be imposed. During the COVID-19 pandemic, gatherings were deemed a substantial health risk, and countries placed several restrictions on them, including outright bans. In the selected cases here, domestic courts examine these restrictions and their conformity with necessity and proportionality requirements.

39. *Madrasha Teacher’s Association v. State of West Bengal, W.P.A* (2021): The High Court of Calcutta directed local authorities to authorize a sit-in demonstration at a venue outside the Central Park, Kolkata. However, the High Court ordered the petitioners to follow existing COVID-19 protocols, as well as all pollution control norms, while holding the demonstration. The petitioners had filed a writ petition in the Court after their application to hold a sit-in demonstration was refused by the state authorities on “flimsy and inadequate grounds”. The High Court held that the petitioners’ fundamental rights to freedom of speech and expression and to assemble peacefully could not be curtailed by the State and that a balance had to be struck between their rights and maintaining public order and security. More info [here](#).

40. *Constitutionality of Emergency Decree No. 1074* (2020): The Constitutional Court of Ecuador rendered an opinion on the constitutionality of the Decree No. 1074 signed by the President regarding the extension of the state of emergency during the COVID-19 pandemic. The Court upheld the Decree that provided for the suspension and limitation of the rights of freedom of movement, assembly and association. Nevertheless, the Court reminded the Government that the suspension of these fundamental freedoms can only be considered appropriate, necessary, and proportional as long as it is needed to respond to the COVID-19 pandemic and does not unduly interfere with the exercise of other rights not covered by the Decree. The suspensions and limitations that exist must respect the work of the communications media, of the people who provide indispensable services for the treatment of the crisis, of the national and international organizations in the governing of humanitarian assistance, and of human rights defenders. More info [here](#).

41. *Commissioner of Police (NSW) v. Gibson* (2020): The Supreme Court in New South Wales, Australia, granted a request from the assistant commissioner of police to prohibit a gathering in Sydney, Australia because of concern over COVID-19 transmission. After an individual submitted a notice for a planned gathering to protest against Aboriginal deaths in police custody, the assistant commissioner applied to court for an order to prohibit the gathering. The Court recognized the importance of the right to freedom of assembly, but found that the context of the COVID-19 transmission risk at the time and the location of the planned gathering in the middle of the city on a weekday meant that it was reasonable to approve the prohibition request. Full analysis [here](#).

A subset of cases concerned with the protection of public health have dealt with restrictions to anti-abortion protests. To protect the privacy and reproductive health of patients and staff members at abortion clinics legislatures around the world are increasingly passing “buffer or safety zone” provisions that require groups staging anti-abortion protests to keep a certain distance from these health care facilities and prohibit harassing those visiting abortion clinics. These laws have long been challenged by anti-rights groups in the United States and across the world. Recent decisions adopted by courts in the UK are providing a more complete understanding of the interests involved, ensuring that individuals seeking a safe abortion have unimpeded access to clinics where such treatment is provided, and are not driven to less safe procedures by shaming behavior, intrusions upon their privacy, or other means of undermining their autonomy.

42. *The Attorney General for Northern Ireland v. Abortion Services (Safe Access Zones) (Northern Ireland) Bill* (2022): The United Kingdom Supreme Court unanimously held that clause 5(2)(a) of Northern Ireland’s Abortion and Safe Access Zones Act is compatible with the rights of freedom of conscience, freedom of expression, and the right of assembly under the European Convention on Human Rights. The Attorney General of Northern Ireland had challenged the Act before the Supreme Court on the grounds that clause 5(2)(a) disproportionately violated the rights of anti-abortion protesters by prohibiting and punishing with a fine of £500 any protest in the so-called “safe access zones” near clinics where abortions are performed. The Supreme Court held that the restriction on the anti-abortion protesters’ rights of freedom of conscience, freedom of expression, and right of assembly was lawful, pursued the legitimate aim of protecting women’s privacy, and was necessary in a democratic society because it was not disproportionate. The Court

held that the protests of anti-abortion demonstrators are permitted outside of “safe access zones” and that the restriction safeguards the “compelling social need” to avoid interference and intrusion into the private lives of women who choose to have abortions and health care workers who perform abortions. Further, the Court held that the £500 penalty for violators of clause 5(2)(a) of the Act is not unreasonable or disproportionate. Full analysis [here](#).

43. *Dulgheriu v. The London Borough of Ealing* (2019): A U.K. Court of Appeal upheld a lower court ruling that the imposition of a safety zone around a reproductive healthcare clinic was compatible with articles 8 (Right to respect for private and family life), 9 (Freedom of thought, conscience, and religion), 10 (Freedom of expression) and 11 (Freedom of assembly and association) of the European Convention of Human Rights. The Good Counsel Network, a Christian anti-abortion organization, brought the challenge against the London Borough of Ealing in relation to a Public Spaces Protection Order which prohibited pro-life protesters from engaging in their activities within the immediate vicinity of the clinic. The Court recognized that women’s reproductive choices are an intensely personal and sensitive matter, and that Article 8 protected the right to access advice on and medical procedures for abortion available under the laws of the U.K. The Court found that there was sufficient evidence that the activities of the pro-life group had a detrimental impact on those in the community and that their tactics caused lasting psychological and emotional harm to the service users. Therefore, after carefully balancing the fundamental rights, the Court concluded that the restriction of the protesters’ freedom of expression, assembly and conscience was justified and proportionate. More info [here](#).

Facilitation of assemblies and use of force

Repression and excessive and illegal use of force by law enforcement officials involved in policing assemblies has been the subject of recent protest litigation. In the selected decisions, courts have affirmed the obligation of public officials to facilitate peaceful protests and respect and ensure the rights of organizers and participants, journalists, observers, medical personnel and other members of the public. The decisions stress that any use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination, and those using force must be accountable for each use of force.

44. *Case of Lutsenko and Verbytskyy v. Ukraine* (2021): The ECtHR found that Ukraine was responsible for the violation of Articles 2, 3, 5 and 11 of the European Convention on Human Rights following the abduction, ill-treatment and torture of two protestors (one of whom was murdered) by non-state agencies. The two protestors were abused (and one killed) following the Maidan protests, as a result of escalating violence and excessive force that was approved by state authorities. The Court held that the Ukrainian Government had failed to protect these protestor’s rights to life, peaceful assembly and freedom of association, and to safeguard them from torture and inhumane or degrading treatment. Moreover, the fact no independent and effective criminal investigation had taken place further violated their rights to a fair trial. Whilst the Court noted that some measures would be appropriate to contain the protests if they became disruptive, the Ukrainian authorities had instead taken active steps to punish or intimidate protestors, prevent their participation in future

events and end the protests more broadly. More info [here](#).

45. *Shmorgunov and Others v. Ukraine* (2021): the ECtHR held the Ukrainian government guilty of violating applicants' right to peaceful assembly guaranteed under Article 11 of the European Convention on Human Rights. The applicants had participated in mass protests commonly referred to as "Euromaidan" and/or "Maidan" organised against the government's decision to suspend preparations for the signing of the Ukraine-European Union Association Agreement. The applicants alleged police ill-treatment, police brutality, arbitrary detentions, and unjustified dispersal of demonstrators. The court held that the police officers' "increasingly violent dispersal of the series of protests" had the aim to "deter the protesters and the public at large from taking part in the protests and more generally from participating in open political debate" and therefore, violated Article 11 of the Convention. Full analysis [here](#).

46. *Soledad María Granda Castañeda and others v. Presidency of Colombia and others* (2020): The Supreme Court of Justice of Colombia ruled that the conduct of state authorities involved in the management of mass demonstrations, including the police and the military, has systematically threatened the right to peacefully protest in Colombia. The case was brought by human rights defenders which sought the protection of the rights to protest, freedom of expression and of the press. In its ruling, the Court found that state authorities have routinely engaged in excessive use of force, stigmatization and arbitrary detentions when dealing with mass protests. In particular, the Court found that the Anti-Riot Police Squad (Escuadrones Móviles Antidisturbios de la Policía Nacional) has applied repeated, constant, and disproportionate violence against peaceful protesters, in violation not only of its own protocols but also of constitutional principles and values. The Court ordered state authorities to refrain from any unlawful conduct when managing peaceful assemblies. It also ordered the adoption of a series of positive measures to ensure the full enjoyment of the right to peaceful protest in the country. In particular, the Court ordered state authorities to develop, in consultation with key stakeholders, a protocol for the use of force in the management of peaceful protests, and a protocol to ensure access to information and the monitoring of arrests during protests. The Court also called for use of 12-bore shotguns by the Anti-Riot Police Squads to be suspended. More info [here](#).

47. *Laguna Guzman v. Spain* (2020): The ECtHR found that the forceful and violent dispersal of a demonstration by police officers that injured a protester violated her freedom of assembly. The case concerned Ms. Guzman who was peacefully protesting with a rogue demonstration group. She, along with others, was attacked and incapacitated by police officers in their effort to disperse the demonstration. An investigation against some of the police officers was dismissed whilst another against some protesters ended with their acquittal. The *Audiencia Provincial* confirmed dismissing the proceedings against the policemen, saying that they had acted legitimately. Additionally, the Constitutional Court declared Ms Guzman's *amparo* appeal inadmissible. Taking into account the fact that the protests were peaceful and there was no evidence that they caused public disorder, the ECtHR held that the violent method used by the police to disperse the protesters was not justified and amounted to a disproportionate interference. Accordingly, the Court found that Ms. Guzman's

right to freedom of assembly under Article 11 of the European Convention of Human Rights had been violated. More info [here](#).

Sexual and gender-based violence during protests

Cases of sexual and gender-based violence in the context of peaceful protests has also been brought before courts. The selected decisions here affirmed that such acts violate the victims' fundamental rights, including freedoms of peaceful assembly and expression. The decisions stress that officials responsible for these violations must be held accountable, and effective remedies must be available to victims.

48. *Williams v. Zimbabwe* (2021): The ACHRP held that Zimbabwe was responsible for violating the applicants' rights to freedom of expression, freedom of assembly, freedom of association, personal liberty, non-discrimination, and equal protection. The petitioners were members of an organization called Women of Zimbabwe Airse (WOZA) and were systematically harassed, intimidated, threatened, arbitrarily arrested, and prevented from engaging in public demonstrations and peaceful protests. The Commission found that all these were unlawful restrictions because they were not necessary in a democratic society and served no legitimate aim, such as protecting national security, public order, public health, or morals. The Commission ordered Zimbabwe to investigate, prosecute, and punish those responsible for the human rights violations; provide redress for prejudices suffered by the victims; and carry out human rights training to police and public officials. More info [here](#).

49. *Case of Women Victims of Sexual Torture v. Mexico* (2018): The IACtHR found that Mexico had violated the human rights of eleven women who, on May 3 and 4 of 2006 had been arrested in the context of a public demonstration. The women were subjected to physical and sexual abuse, were beaten, threatened, and tortured while they were being arrested, when they were being transferred to a detention facility and in the facility itself. They were sexually assaulted and many of them were raped. The Court found that the Mexican State violated the women's right to personal integrity, dignity, and private life, the right not to be tortured, the right to assembly, the right to personal liberty and judicial guarantees, and the right to personal integrity. Full analysis [here](#).

50. *Egyptian Initiative for Personal Rights v. Egypt* (2013): The ACHPR held Egypt responsible for the violation of Articles 1, 2, 3, 5, 9, 16, 18, and 26 of the African Charter on Human and Peoples' Rights ("the Charter"). The present case concerned protests that occurred on 25 May 2005 at the Saad Zaghloul Mausoleum and the Press Syndicate. Supporters of the Egyptian Movement for Change, who were promoting a constitutional amendment to allow multi-candidate presidential elections in Egypt, were assaulted by riot police and followers of the National Democratic Party ("NDP"), the ruling party in Egypt at the time of the events. The victims were targeted due to their female gender, profession as journalists, and political opinions. In this respect, the Commission held that the right to freedom of expression is one of the cornerstones of democratic governance; therefore, public officials are expected to tolerate a higher degree of criticism in their capacity as public figures. The Commission also ruled that freedom of expression can only be restricted

pursuant to the Charter when the restriction serves a legitimate purpose and is proportionate and necessary in a democratic society. Taking account of the fact that the victims were journalists, most of whom attended the demonstration to disseminate their views on the constitutional amendments and record the event, the Commission concluded that by facilitating the victim's assault, the Respondent State infringed their right to freedom of expression under Article 9 of the Charter. More info [here](#).

51. *Multiple Plaintiffs v. head of SCAF* (2011): The Court of Administrative Judiciary in Egypt held that the decision of conducting a compulsory medical examination, in particular a virginity test on girls detained by the military forces during public protests, is illegitimate as it violates the Egyptian Constitution and the criminal law. It ruled that the military's administrative decision to submit female detainees to compulsory virginity tests was suspended and revoked. The case was brought by two plaintiffs who had participated in a demonstration in Al-Tahrir Square when one of them was arrested and subjected to a compulsory examination of her virginity. The defendant asked the Court to dismiss the case for lack of an administrative decision and because it was filed by parties with no interest in the dispute. More info [here](#).

Violation of the privacy of protesters

Another issue of increasing importance being brought before courts around the world is the protection of the right to privacy of protesters. The following cases examine how surveillance and the way in which the data of protesters is collected and shared conforms to the rights to privacy and freedoms of expression and peaceful assembly. These decisions emphasize that these measures should meet requirements of legality, necessity and proportionality and never be aimed at intimidating participants or would-be participants in protests.

52. *R v. the Chief Constable of South Wales Police* (2020): The Court of Appeal Civil Division unanimously held that the South Wales Police's use of Automatic Facial Recognition Locate technology, both in a general manner and specifically on 21 December 2017 and 27 March 2018, violated the right to privacy under Article 8 of the European Convention on Human Rights, the United Kingdom Data Protection Act and the Public Sector Equality Duty. The petitioner, Mr. Edward Bridges, appealed the judgment of the Divisional Court of the Queen's Bench Division on the grounds that the use of Automatic Facial Recognition Locate technology violated ECHR Article 8 right to privacy and has the potential to produce discriminatory and deterrent effects on freedom of expression and the right of assembly. For its part, the South Wales Police argued that the use of the technology was within its powers, that it was lawful and that notice of its use was given to members attending public events. The Court of Appeal Civil Division held that the use of Automatic Facial Recognition technology did not meet the legality requirement under the right to privacy in Article 8 of the European Convention on Human Rights by allowing excessive discretion to the South Wales Police. Furthermore, the Court held that the South Wales Police could not demonstrate that the use of such technology would not have a detrimental effect on other rights of the public or that it did not have the potential to produce discriminatory effects. More info [here](#).

53. *In Re: Banners Placed on Roadside in the City of Lucknow v. State of Uttar Pradesh* (2020): The Allahabad High Court ruled that the posting of banners by State officials publicizing personal details of individuals accused of vandalism was a violation of the fundamental right to privacy. The Chief Justice of the Allahabad High Court invoked its public interest jurisdiction and initiated *suo moto* proceedings against the Lucknow District administration and the Police administration (State Executive) for posting the large-scale banners at major roadside areas in response to damage done during a protest against the Citizenship Amendment Act in December 2019. The Court held that the displaying of photographs, names and addresses of certain persons publicly by the State Executive was an “unwarranted interference with [their] privacy.” Publication of such personal details by the State failed to satisfy the three-part test of legality, legitimacy and proportionality. Accordingly, the Court directed the State to take down the banners and prohibited the public placement of any additional banners containing personal data of individuals without authority of law. The case is currently on appeal before the Supreme Court of India, and the banners remain up until the final adjudication by the Supreme Court. More info [here](#).

54. *Mr. B and Mr. S v. Essen Police Headquarters* (2019): The Higher Administrative Court in North Rhine-Westphalia, Germany held that the police infringed upon the right to freedom of assembly by taking photographs of a public assembly and its participants and publishing it on the police’s social media platforms. During a public assembly against racism, two police officers took photographs of the assembly – which allowed for the identification of the participants – for the purpose of the police’s public relations. Two of the participants brought an application seeking a declaration that the police conduct was unlawful and infringed their right to freedom of assembly under article 8 of the German Basic Law. The Court agreed with the lower court’s reasoning and held that the taking of photographs at a public assembly deterred future participants and so infringed their exercise of the right to freedom of assembly. The Court held that there was no statutory basis for the police conduct and that it was, therefore, an unlawful limitation of the right. More info [here](#).

Internet shutdowns during protests

Recent litigation in domestic and regional tribunals has challenged measures to block or hinder internet connectivity and place restrictions on social media use in relation to peaceful protests. In the following decisions courts have found that these measures violate constitutional and human rights norms.

55. *Chapter One Foundation v. Zambian Information and Communications Technology Authority* (2021): On March 21, 2022, the High Court for Zambia at Lusaka issued a consent judgment, confirming that the Zambian Information and Communications Technology Authority (ZICTA) would not “do any act or make any omission outside of their legal regulatory powers and authority which may inhibit or interrupt the flow of and uninhibited access to information on all available telecommunication platforms under their control and/or regulation where the interest of consumers and their consumer and constitutional rights are threatened”. ZICTA also consented to informing the public within 36 hours of any disruptions of the reason for that interruption. On August 12, 2021, Zambia held general elections. In the run-up to the election on August 12, local

media reported that the incumbent president, Edgar Lungu, was planning on shutting down access to social media during voting “in an effort to maintain peace and order during the voting period”. Access to internet services was curtailed during the election. More info [here](#).

56. *Zimbabwe Lawyers for Human Rights v. Minister of State* (2021) The Zimbabwean High Court held that an order to shut down internet services was unlawful, and ordered that all telecommunications service providers restore access to their subscribers. In January 2019, Zimbabwe’s Congress of Trade Unions called for a national stay-away. Many individuals were arrested in connection with this stay-away. On the second day, January 15, access to internet and social media platforms including WhatsApp and Facebook, was interrupted in Zimbabwe. The Minister of State, Owen Ncube, had issued orders under the Interception of Communications Act (the Act) to shut down the internet in the country. One of the telecommunications service providers, Econet, issued a statement that “Further to a warrant issued by the Minister of State in the President’s Office for National Security through the Director-General of the President’s Department acting in terms of the Interception of Communications Act, internet services are currently suspended across all networks and internet service providers. We are obliged to act when directed to do so and the matter is beyond our control.” More info [here](#).

57. *Amnesty International et al. V. Togo* (2020): The Community Court of Justice of the Economic Community of West African States (ECOWAS) held that the Togolese government violated the applicants’ right to freedom of expression by shutting down the internet during protests in September 2017. The Court found that access to the internet is a “derivative right” as it “enhances the exercise of freedom of expression.” As such, internet access is “a right that requires protection of the law” and any interference with it “must be provided for by the law specifying the grounds for such interference.” As there was no national law upon which the right to internet access could be derogated from, the Court concluded that the internet was not shut down in accordance with the law and the Togolese government had violated Article 9 of the African Charter on Human and Peoples’ Rights. The Court subsequently ordered the Respondent State of Togo to take measures to guarantee the “non-occurrence” of a future similar situation, implement laws to meet their obligations with the right to freedom of expression and compensate each applicant to the sum of 2,000,000 CFA (approx. 3,500 USD). More info [here](#).

58. *Bhasin v. Union of India* (2020): The Supreme Court of India ruled that an indefinite suspension of internet services would be illegal under Indian law and that orders for internet shutdown must satisfy the tests of necessity and proportionality. The case concerned the internet and movement restrictions imposed in the Jammu and Kashmir region in India on August 4, 2019, in the name of protecting public order. In the end, however, the Court did not lift the internet restrictions and instead, it directed the government to review the shutdown orders against the tests outlined in its judgment and lift those that were not necessary or did not have a temporal limit. The Court reiterated that freedom of expression online enjoyed Constitutional protection, but could be restricted in the name of national security. The Court held that though the Government was empowered to impose a complete internet shutdown, any order(s) imposing such restrictions had to be made pub-

lic and was subject to judicial review. More info [here](#).

59. Case of Disha A. Ravi (2021): The Patiala House Court, a lower court in the Indian capital of New Delhi, in an interim decision, granted bail to the applicant who had been involved in the creation and sharing of “Toolkit” documents on social media. The digital Toolkit contained documents in relation to nationwide protests against the newly introduced Farmers Bills and the applicant was arrested for the offences of sedition and criminal conspiracy for her part in the circulation of the Toolkit. While allowing the applicant’s bail application because of the lack of any strong reason or evidence that would result in the contrary, the Court made pertinent observations on the applicability of the law of sedition. In so doing, the Court upheld a citizen’s right to dissent and protest, which rights are protected under the fundamental right to free speech – it further stated that dissent and divergence of opinion was a sign of a healthy democracy. The Court also held that the right to seek a global audience without any geographical barriers on communication was a part of freedom of speech and expression. More info [here](#).

60. Elvira Dmitriyeva v. Russia (2019): The ECtHR held that Russia violated the rights to freedom of expression, peaceful assembly, personal liberty, effective remedies, and guarantees of fairness by denying approval for a peaceful anti-corruption protest and then arresting and fining the organizer who ultimately held the event. Ms. Dmitriyeva applied for authorization to hold a peaceful assembly against government corruption in Russia to join a series of protests to be held nationwide on March 26, 2017. The regional authorities denied the request to hold the protest because they had other events planned at those locations. The protest was held despite not having authorization and took place peacefully, but in the end, its organizer was arrested for a few hours, fined, and sentenced to provide community service work hours for having promoted and held an unauthorized assembly by the Aviastroitelnyy District Court of Kazan and the Vakhitovskiy District Court. Both decisions were affirmed by the Supreme Court of Tatarstan. The ECtHR had to decide whether the arrest of Ms. Dmitriyeva, for posting a message on the website “Vkontakte” to spread the protest, violated her right to freedom of expression. The ECtHR noted that domestic law prescribe that organizers of public events may only campaign to call for participation in such events only when the event has been approved by the competent regional authority. However, the European Court found that Ms. Dmitriyeva’s conviction violated her right to freedom of expression. The ECtHR emphasized that neither the Government nor the Russian domestic courts referred to legitimate purposes for arresting Ms. Dmitriyeva. In particular, it remarked that Russia has never claimed that the public event presented a risk to public safety or might lead to public disorder or crime. Further, the ECtHR stated that the applicant’s message has public interest and is entitled to strong protection. It also considered the subsequent arrest of the organizer to be a disproportionate restriction on freedom of expression. Full analysis [here](#).

61. Kablis v. Russia (2019): The European Court of Human Rights held that prohibiting Mr. Grigoiy Kablis from holding a demonstration, and ordering the removal of his online posts about it, violated his rights to freedom of expression and public assembly, protected by Articles 10 and 11 of the European Convention on Human Rights, respectively. In September 2015, following news that

Russian law enforcement launched a criminal investigation into senior officials of the Komi Republic, north-east Russia, Mr. Kablis sought permission from the municipal authorities to hold a public gathering for around fifty persons in the main town square. He also published three blog entries and a social media post about the gathering, the criminal investigation, and other political topics. The authorities refused his request, blocked his blog, and forced the social media company to delete his account. Mr. Kablis unsuccessfully complained against the refusal and the blocking in Russian courts. The European Court of Human Rights held that the Russian government failed to show that it was necessary in a democratic society to refuse Mr. Kablis's request to hold a picket. The Court also held that the blocking equated to prior restraint and the authorities failed to provide relevant and sufficient reasons for interfering with his right to freedom of expression. Full analysis [here](#).

Protection of journalists covering protests

In the following decisions courts recognize that the media plays a crucial role in providing information about protests and the way in which the authorities handled them (“watch-dog” role). They further examine restrictions imposed by public officials and law enforcement against journalists for their coverage of a demonstration.

62. *OOO Flavus and Others v. Russia* (2022): The ECtHR unanimously held that the “wholesale blocking of opposition online media outlets” violates freedom of expression, ordering the Russian government to pay €10,000 as compensation to each applicant. This was after the applicants’ request before national courts for a judicial review of a blocking measure imposed by the Prosecutor General was dismissed. The blocking measure was made through the telecommunications regulator on the basis that the websites owned by the applicants “revealed a uniform thematic trend towards the coverage of public events of an unlawful nature in Russian territory”. The ECtHR reasoned that “blocking access to an [entire] website was an extreme measure which ... deliberately disregarded the distinction between the legal and illegal information the website might contain”, and that the “measures taken before a judicial decision had been issued on the illegality of the published content had amounted to a prior restraint on publications”. More info [here](#).

63. *Silveira v. Sao Paulo State Treasury Office* (2021): The Supreme Federal Court of Brazil held that the State is liable for injuries to journalists caused by police action when covering protests. A journalist was hit in the eye by a rubber bullet when covering a protest and lost 90% of his vision in that eye. He sought compensation from the State and was successful in the first instance court. When the second instance court overturned the decision, holding that the State was not liable, he appealed to the Supreme Federal Court. The Court examined the rights to freedom of the press and to work, and the UN guidelines on the use of less-lethal law enforcement mechanisms, and awarded the journalist compensation for medical expenses, loss of earnings and pain and suffering. More info [here](#).

64. *Index Newspapers v. City of Portland* (2020): The United States Court of Appeals for the Ninth Circuit lifted a stay issued on August 27, 2020, reinstating the district court injunction that

barred federal agents from dispersing, arresting or using physical force against journalists and legal observers during protests in the city of Portland. The action was brought in June by Index Newspapers LLC and a range of journalists, photographers and legal observers. The Plaintiffs allege that federal agents in the U.S. Department of Homeland Security (DHS) and the U.S. Marshals Service (“Federal Defendants”) targeted journalists and legal observers in violation of their First and Fourth Amendment rights. Overturning the stay against the preliminary injunction, the majority opinion ruled that the Federal Defendants did not show a strong likelihood of success on the merits of the claim. The Court reasoned that, on the basis of the entrenched recognition of the public’s right to protest and the widely accepted importance of the press, the Plaintiffs had demonstrated a likelihood of success on the merits of their First Amendment right-of-access claim. More info [here](#).

65. Case of *Shahidul Alam* (2019): In August 2019, the Supreme Court of Bangladesh upheld the order of the High Court division of the Supreme Court of Bangladesh (High Court), in which the High Court had ordered a stay on the investigation of photojournalist and human rights activist Dr. Shahidul Alam, under the (now repealed) Section 57 of the Information and Communication and Technology Act, 2006 (ICT). The journalist was being investigated for a live video he posted on Facebook and comments he made in an interview about protests by Bangladeshi students against the Government. Section 57(2) provided for punishment for “publishing fake, obscene or defaming information in electronic form”, and was punishable with imprisonment for a term of ten years. Dr. Alam allegedly made false and malicious comments and statements on the Facebook live video and an interview regarding the protests against the death of two students who had died due to lack of road safety mechanisms and traffic mismanagement by the Government. He was arrested on August 5, 2018 and released on bail by order of the High Court on November 15, 2018. In March 2019, Dr. Alam filed a writ petition challenging the legality of charges against him. The High Court suspended the investigation of him and issued a ruling asking the government why the investigation against him should not be declared illegal and contrary to the Constitution of Bangladesh and the Digital Security Act, 2018. The High Court’s order of stay was challenged, and in appeal, four judges of the appellate division of the Supreme Court upheld the stay order of the High Court and directed the High Court to dispose of the case in a time bound manner. More info [here](#).

66. *Butkevich v. Russia* (2018): The ECtHR found that the Russian Government had violated a journalist’s right to freedom of expression by arresting, prosecuting and sentencing him to administrative detention following his attempt to photograph a protest. The journalist, Maksim Butkevich, was arrested by the Russian police while covering a street protest during the 2006 G8 summit in St. Petersburg. He was subsequently sentenced to two days’ administrative detention, despite the fact that he had identified himself as a journalist to the police. The ECtHR found that the journalist’s rights to liberty and security, a fair trial, and freedom of expression had been violated by the Russian authorities and courts in this case. The ECtHR found that the arrest was not in accordance with Russian law. It also applied “strict scrutiny” to prosecution and conviction of the journalist, since they ensued his removal from the scene of a demonstration. In this regard, it found that the Russian authorities and courts had not given sufficient consideration to whether the journalistic function performed by Mr. Butkevich excused or mitigated his alleged actions, whether the demonstration

threatened public order, and whether the measure adopted against Mr. Butkevich was proportionate. More info [here](#).

67. *Richard Velez Restrepo v. Colombia* (2012): The IACtHR held that Colombia violated Article 13 of the American Convention on Human Rights when military officers assaulted a journalist who was covering an anti-government demonstration. The court wrote that Article 13 encompasses both an individual right to seek and impart information, including its mass dissemination, and a collective social right to receive information provided by others. Further the court found that the attack was meant to silence the journalist which could have a chilling effect on other journalists. Because the state also failed to protect and investigate the threats and harassment suffered by his family, their rights to humane treatment, protection of their honor and dignity, right to freedom of movement and residence, and right to judicial protection, among others, were violated. More info [here](#).

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