



PRESENTED TO

UN SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM
OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

JOINT SUBMISSION

Law enforcement promotion and protection of human rights in the context of peaceful protests

Introduction

The above-listed organizations¹ are pleased to provide this joint submission to inform the Special Rapporteur's development of practical tools to assist law enforcement bodies in promoting and protecting human rights in the context of peaceful protests. This joint submission represents the perspectives of the above-listed organizations, along with an array of governmental representatives, regarding the questions raised by the Special Rapporteur in his recent call for inputs. In particular, the majority of the information presented in this submission was solicited by means of an online survey in March 2023, where selected civil society and government respondents were asked to provide their views on the following questions:

- Are there any examples in your country or region of laws, guidance, protocols, or mechanisms (including accountability mechanisms) that have been

¹ The contributing organizations include: African Policing Civilian Oversight Forum (APCOF); Auschwitz Institute for the Prevention of Genocide and Mass Atrocities (AIPG); Institute for Human Rights and Development in Africa (IHRDA); International Center for Not-for-Profit Law (ICNL); and Réseau Nigérien des Défenseurs des Droits Humains (RNDDH). This joint submission was also informed by input from an array of representatives of governmental institutions, as described further below.

effective in ensuring human rights are respected and protected by law enforcement before, during and after protests? How successfully have these laws, guidance, protocols, and mechanisms been implemented? Are there gaps or weaknesses in implementation that need to be addressed?

- Are there any examples in your country or region of positive practices and strategies by law enforcement authorities that have supported the protection of human rights before, during, and after protests? How consistently are these practices and strategies deployed by law enforcement? Is there a need to expand or systematize the application of these practices and strategies?
- In your view, what other measures, mechanisms, and actions are needed to promote respect and protection of peaceful protest rights by law enforcement in your country?

24 respondents provided inputs to the survey, including the above-listed organizations; representatives of governmental institutions listed on the final page of this submission; and other governmental representatives who did not wish for their institutions to be listed. Inputs were received from respondents in Burundi, Chile, The Gambia, Honduras, Kenya, Mexico, Niger, Nigeria, South Africa, and Zambia.

In this joint submission, we present the information collected through the survey, along with other relevant contextual information drawn from public sources. We hope this information will be helpful to the Special Rapporteur in preparing his report to the UN Human Rights Council and stand available to answer any questions or provide additional information, as appropriate.

Laws, guidance, protocols, or mechanisms (including accountability mechanisms) that have been effective in ensuring human rights are respected and protected by law enforcement before, during and after protests

Respondents noted some efforts, at the regional and national levels, to promulgate and implement laws, guidance, protocols, and mechanisms to respect and protect human rights in relation to protests. However, respondents and other sources suggest that these efforts, particularly at the national level, have at best been incomplete, and require further progress.

WITH MAJOR CONTRIBUTIONS FROM CIVIL SOCIETY, THERE HAVE BEEN SUCCESSFUL EFFORTS TO ESTABLISH GUIDELINES FOR THE PROTECTION AND FACILITATION OF PROTEST RIGHTS AT THE REGIONAL LEVEL.

At the **African regional level**, in 2017 the African Commission on Human and Peoples' Rights (ACHPR) adopted the *Guidelines on the Policing of Assemblies by Law*

*Enforcement Officials in Africa.*² The Guidelines aim to strengthen observance of human rights, with a particular focus on human rights defenders (HRDs), to support implementation of Commission Resolution 281 on the Right to Peaceful Demonstrations (2014). The Guidelines are “soft law,” so they are not ratified by States, but provide an authoritative interpretation for use by States, the judiciary and other stakeholders in interpreting the right to assemble under Article 11 of the African Charter on Human and Peoples’ Rights and the obligations on law enforcement officials within that context.

The Guidelines specify the organizational and operational requirements for a rights-based approach to the policing of assemblies, and address, *inter alia*: (a) the impermissibility of requirements to secure permission to hold assemblies; (b) technical issues such as the use of military, clear chains of command, and communication mechanisms; (c) access to information regarding the regulatory framework for policing of assemblies, engagement with assembly organizers and participants, and reporting/reviews; (d) minimum standards for training to facilitate the right to assembly; and (e) the oversight architecture required to ensure accountability for police actions during the management of assemblies.

The Guidelines provide practical guidance to State parties on measures that should be taken before, during and after assemblies to ensure a rights-compliant approach by law enforcement agencies. Before assemblies, this includes processes and procedures to ensure proper risk assessments and contingency plans (including for spontaneous assemblies); and gathering and retaining information. During the conduct of an assembly operation, the Guidelines provide guidance on deployment and the use of coercive powers (including force), the management of simultaneous and counter-assemblies, and the use of arrest and detention where this is a measure of last resort. Following an assembly, the Guidelines set out a process for debriefing, monitoring and evaluation of operations, and public reporting.

States are encouraged to implement the Guidelines, including through a range of measures aimed at the review and reform of legislation, and to provide adequate training. The Commission does not keep data on implementation, but the African Policing Civilian Oversight Forum (APCOF) has provided technical support to the Malawi Police Service to review and revise their Policy on Use of Force and Public Order Policing to align with the Guidelines, to provide one concrete example of implementation efforts by states. Training on the Guidelines has also been conducted by the ACHPR, with technical support from APCOF, in the Sahel region through the

² African Commission on Human and Peoples’ Rights, *Guidelines on the Policing of Assemblies by Law Enforcement Officials in Africa* (2017), <https://ihorda.uwazi.io/api/files/1509951671784jbohappg6yovp0vbjfk1rftj4i.pdf>.

Police and Human Rights Platform (comprised of the police organizations of Niger, Burkina Faso and Mali), with the East African Standby Force, and with station commanders across the four regions of Malawi.

At an **African sub-regional level**, the East African Police Chiefs Cooperation Organisation (EAPCCO) – a regional policy body with membership consisting of the Chiefs of Police of 14 countries³ – adopted Standard Operating Procedures (SOPs) on Public Order Policing in 2016. The SOPs are based on international and regional instruments, and were a source document for the ACHPR in developing the *Guidelines on the Policing of Assemblies by Law Enforcement Officials in Africa*. The SOPs aim to guide cross-border policing deployment and cooperation in public order situations; inform the development of curricula of regional law enforcement training institutions on public order policing; provide a guide to police reform for Member Countries; and identify relevant international and regional standards on public order policing for national implementation by Member Countries. The SOPs require Member Countries to establish procedures to review the policing of demonstrations against the SOPs.

AT THE NATIONAL LEVEL, SOME GOVERNMENTS HAVE ENSHRINED RESPECT FOR PROTEST RIGHTS IN THEIR CONSTITUTIONS, OR PURPORTED TO PROTECT THESE RIGHTS IN LAWS, BUT PROTEST RIGHTS CONTINUE TO BE RESTRICTED AND VIOLATED IN PRACTICE, INCLUDING DUE TO INADEQUATE IMPLEMENTATION.

In **Burundi**, the government protects the right to protest in the Constitution, which states at Article 32: "La liberté de réunion et d'association est garantie, de même que le droit de fonder des associations ou organisations conformément à la loi". The right to protest is regulated under Law No. 1/28 of December 05, 2013, regarding demonstrations on the public highway and public meetings. However, respondents indicate that full protection of protest rights, as prescribed in the Constitution and under law, is lacking for a variety of reasons, including:

- Lack of separation of powers, and executive suppression of judicial powers
- Ignorance of human rights, whether in the practice of law or in the formulation and implementation of policies
- Lack of means amongst individuals and HRDs to file claims for violations
- Lack of transparency in the exercise of laws meant to protect citizens
- Restrictions barring civil society from fully contributing to adoption of laws

One respondent states that in 2015, initially peaceful demonstrations evolved to become more violent in character, and the defense and security forces, especially the

³ See Eastern Africa Police Chiefs Cooperation Organization, "About Us", <https://eapcco.org/about-us/>. Members of EAPCCO include: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania, and Uganda.

police, reacted in a disproportionate way: firing live ammunition at demonstrators, causing flagrant violence against human rights, engaging in arbitrary arrests and detentions, imposing restrictions on freedom of movement, and committing enforced disappearances, extrajudicial executions, and murders.

In **The Gambia**, the 1997 Constitution and the Public Order Act, CAP 22.01 (Act No. 7 of 1961 as amended), form the main body of law governing protests. The Public Order Act was one of the laws used by the regime of former President Yahya Jammeh to clamp down on citizens' rights to assembly, protest and political activity. The Act requires a person or group of persons seeking to embark on a protest to obtain a permit from the police; while this provision is intended to enable the police to provide protection for protesters, it has in practice been used to limit the exercise of the right. This weakness in the implementation of the law has led to a constitutional challenge of the law, but in 2017 the Supreme Court upheld the Act as being in conformity with the Constitution. In 2020, the Institute for Human Rights and Development in Africa (IHRDA) brought an Application before the African Court on Human and Peoples' Rights on behalf of seven Gambians, arguing that the Act violates the African Charter on Human and Peoples' Rights by giving wide discretionary powers to the police to grant or refuse a permit, thus limiting the freedom of assembly and protest. In 2022, however, the African Court declared the case inadmissible on grounds that the ECOWAS Community Court of Justice had already pronounced on the matter; there is no avenue to appeal the Court's decision.

In **Honduras**, in 2015, the National Congress passed the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Operators,⁴ which among other provisions aims to ensure the protection of HRDs in the context of demonstrations. Authorities have also issued a practical guide on the proper use of force and action protocols.⁵ One respondent indicates that application of these measures has not been satisfactory, and capacities of security agents in the use of appropriate protocols still need to be strengthened.

In **Niger**, one respondent notes that the laws regarding protests are not effective in guaranteeing respect for human rights by the police before, during and after protests, due to contradictory provisions and prejudicial application by officials.

⁴ See FOCUS Observatory on Public Policies for the Protection of Human Rights Defenders, "Honduras," <https://www.focus-obs.org/location/honduras/>.

⁵ CONADEH, *Análisis sobre el actuar de las fuerzas de seguridad en el marco de los Estados de Excepción* (2023), <https://www.conadeh.hn/wp-content/uploads/2023/03/ANALISIS-EL-ACTUAR-DE-LAS-FUERZAS-DE-SEGURIDAD-EN-EL-MARCO-DE-LOS-ESTADOS-DE-EXCEPCION.pdf>.

In **Zambia**, while the Constitution provides for freedom of assembly, the Public Order Act (POA) governs the holding of public meetings, procession and assemblies, and guides how law enforcement should police assemblies. Among other provisions, the POA requires that protests or assemblies should first receive authorization from the police, who have in practice often denied permits to protest. Multiple respondents noted that the Public Order Act has been applied in a biased manner by the authorities to favor the ruling party over the opposition. A review of the POA is currently ongoing, in which civil society representatives are providing input, including submissions encouraging Zambia to adopt a law that reflects the ACHPR *Guidelines on the Policing of Assemblies by Law Enforcement Officials in Africa*.

IN OTHER COUNTRIES, AUTHORITIES HAVE ADOPTED MEASURES AND INITIATIVES TO PROMOTE RESPECT FOR PROTEST RIGHTS, INCLUDING FOLLOWING INSTANCES OF RIGHTS VIOLATIONS OCCURRING IN THE CONTEXT OF PROTESTS, THOUGH WITH INCOMPLETE OR VARYING LEVELS OF SUCCESS.

In **Chile**, as a result of serious human rights violations perpetrated by law enforcement and armed forces in the so-called Social Outbreak that occurred between October 2019 and March 2020, a Police Reform Table was formed by the Ministry of the Interior and Public Security, to draft new action protocols for the Carabineros de Chile in accordance with standards established under international human rights law. As a result of these efforts, measures were adopted establishing guidelines for the use of force, including: Circular 1832 (Uso de la Fuerza: Actualiza Instrucciones al Respetto)⁶; and Constitutional Organic Law No. 18,961 of Police of Chile and Protocol for the maintenance and restoration of public order (published in the official gazette on September 8, 2021). These measures establish protocols in relation to the gradual use of force and deployment of anti-riot measures, and accountability mechanisms in case of complaints or requests from the Public Order Control Service. Two other regulations have been updated, regarding protection of human rights in demonstrations: General Order 2870, on new protocols for the maintenance of public order; and General Order 2780, on the use of the riot gun. These regulations mandate that law enforcement officials receive training from human rights instructors, who are also trained and qualified Carabineros.

More recent legal developments in Chile threaten to undermine this progress in establishing positive norms, however. At the time of this writing, the Chilean Senate is considering a measure (Bulletin No. 14.870-25⁷) which would increase penalties for

⁶ Circular 1832: *Uso de la Fuerza: Actualiza Instrucciones al Respetto* (Mar. 1, 2019), available at <https://www.bcn.cl/leychile/navegar?idNorma=1129442&idParte=>.

⁷ Boletín 14870-25: *Modifica textos legales que indica para fortalecer y proteger el ejercicio de la función policial y de Gendarmería de Chile* (introduced Mar. 23, 2023), available at https://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=14870-25.

crimes committed against officials of the Carabineros, Investigative Police and Gendarmerie; establish a privileged legitimate defense for officers using lethal weapons in cases where the officers “reasonably” perceive that an attack “has the potential for death or injury”; and prohibit the issuance of precautionary measures limiting the freedom of officers accused of violations.⁸ The Office of the United Nations High Commissioner for Human Rights (OHCHR) has expressed concern that the provisions of the proposed measure “do not conform to international human rights law,” especially in the context of protests,⁹ while the Inter-American Commission on Human Rights (IACHR) has called for a broadly participatory process to review the measure and ensure its consistency with applicable international standards.¹⁰

In **Kenya**, Article 37 of the constitution of Kenya provides as follows: “Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.”¹¹ The Public Order Act¹² provides guidance on the conduct and management of protests, including providing that anyone intending to carry out a demonstration is expected to notify the police, to ensure that law enforcement officers are able to provide adequate security during the demonstration. While one respondent suggested that this measure has had the intended effect, with demonstrators enjoying police protection throughout their processions, another respondent notes that in practice, there is a misconception on the part of police that anyone planning to protest needs to seek their permission.

The National Police Service Act of 2011, in its Sixth Schedule, provides guidelines for use of force in the policing of demonstrations:

1. A police officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result.
2. The force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is

⁸ OHCHR, *Análisis de la Oficina Regional para América del Sur del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH) al proyecto de ley boletín N°14.870-25 que Modifica textos legales que indica para fortalecer y proteger el ejercicio de la función policial y de Gendarmería de Chile* (Mar. 30, 2023), <https://acnudh.org/load/2023/03/CHILE-Analisis-Senado.pdf>.

⁹ OHCHR, “Chile: ONU Derechos Humanos alerta por propuesta legislativa sobre legítima defensa privilegiada para las policías” (Mar. 31, 2023), <https://acnudh.org/proyecto-legitima-chile/>.

¹⁰ OAS, “CIDH llama a Chile a garantizar proceso participativo de reformas de leyes sobre uso de la fuerza” (Apr. 4, 2023), <https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2023/055.asp>.

¹¹ CONSTITUTION OF KENYA, Ch. 4, Part 2, Sec. 37 (“Assembly, demonstration, picketing and petition”), available at <https://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms/203-37-assembly-demonstration-picketing-and-petition>.

¹² *Public Order Act*, available at <https://www.nis.go.ke/downloads/Public%20Order%20Act.%20Cap%2056.pdf>.

used, and only to the extent necessary while adhering to the provisions of the law and the Standing Orders.¹³

ICNL's Civic Freedom Monitor observes, however, that since the Act was promulgated in 2011, "there have been a number of demonstrations involving clashes between demonstrators and police and military personnel. The police have been accused of using excessive power to intimidate Kenyans who protest. This has been affirmed by videos of police abusing protestors, particularly vulnerable groups, such as internally displaced persons (IDPs)."¹⁴

In **Mexico**, one respondent notes that there are no express regulations for the protection of human rights before, during and after protests, though the Secretaría de Gobernación has issued relevant guidance, including *La Protección del Derecho a la Protesta: Estándares internacionales de derechos humanos*.¹⁵ According to this respondent, this guidance has modified the behavior of law enforcement officers with regard to managing protests, to the extent that "currently they are only limited to accompanying the movements of people in these activities," and even fail to respond when those participating in protests damage property. ICNL's Civic Freedom Monitor notes, however, that measures have been passed or considered at the state level in Mexico "allow[ing] police to use firearms or deadly force to break up protests," and that police have used these powers to lethal effect in dispersing assemblies.¹⁶

In **Nigeria**, one respondent stated that Nigerian Army rules and regulations govern the deployment of the Army during civil unrest and protests, with troops given briefs and pamphlets describing the applicable Code of Conduct and Rules of Engagement for such operations, and with lectures and practical demonstrations conducted to ensure these principles are "engrained into the consciousness" of troops. According to this respondent, these measures have ensured that use of force is restricted to necessary circumstances and that the repercussions for arbitrary use of force are made clear, which has helped in restraining troops from causing harm to persons and abuses of human rights. Another respondent similarly suggests that authorities have been successful in ensuring that law enforcement adheres to Rules of Engagement guiding

¹³ *National Police Service Act 11A Of 2011*, Sixth Schedule ("Conditions as to the Use of Force"), available at <https://www.npsc.go.ke/download/national-police-service-act-11a-of-2011/>.

¹⁴ ICNL, "Civic Freedom Monitor: Kenya," <https://www.icnl.org/resources/civic-freedom-monitor/kenya>.

¹⁵ Secretaría de Gobernación de Mexico, *La protección del derecho a la protesta: Estándares internacionales de derechos humanos* (2021), https://mx.boell.org/sites/default/files/2022-08/WEB_La%20protecci%C3%B3n%20del%20derecho%20a%20la%20protesta_0.pdf.

¹⁶ ICNL, "Civic Freedom Monitor: Mexico," <https://www.icnl.org/resources/civic-freedom-monitor/mexico>.

their deployment before, during, and after protests, which has helped in ensuring protection and respect for human rights during these deployments.

It is worth emphasizing, in this connection, that the ACHPR *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* specify that “[a]s a general rule, the military should not be used to police assemblies and must only be used in exceptional circumstances and only if absolutely necessary.”¹⁷ General Comment No. 37 on the right of peaceful assembly, adopted by the UN Human Rights Committee in 2020, similarly states that “[t]he military should not be used to police assemblies, but if in exceptional circumstances and on a temporary basis they are deployed in support, they must have received appropriate human rights training and must comply with the same international rules and standards as law enforcement officials.”¹⁸ A judicial panel of inquiry established after the 2020 #EndSARS protests (see below) recommended that “the Nigerian Army be discouraged in intervening in internal security.”¹⁹

ICNL’s Civic Freedom Monitor also observes that in Nigeria, “[i]n practice the State sometimes uses force to break up assemblies even where these are peaceful. The basis for allowing some assemblies to go ahead while preventing others appears arbitrary.”²⁰ The U.S. State Department similarly observes that “[t]he army, national police, and other security services sometimes use[] excessive force to disperse protesters.”²¹ During the 2020 #EndSARS protests, in particular, Nigerian security forces responded to predominantly peaceful protests against police brutality with excessive force,²² including the killing by the Nigerian army and police of at least twelve people in incidents in Lagos on October 12, 2020.²³ During protests to mark the

¹⁷ ACHPR, *Guidelines for the Policing of Assemblies*, *supra* note 2, Sec. 3.2. The Guidelines further provide: “Military personnel deployed to assembly operations must be subordinate to, and under the command of, the police authorities; be fully trained, in and be bound by, regional and international human rights standards, as well as any national law enforcement policy, guidelines and ethics; and be provided with all necessary instructions, training and equipment to enable them to act in full respect of this legal framework.”

¹⁸ UN Human Rights Committee, *General Comment No. 37 on Article 21 (Right of peaceful assembly)* (2021), para. 80, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>.

¹⁹ *Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters* (2021), p. 305, <https://lagosstatemoj.org/wp-content/uploads/2021/12/Report-of-Judicial-Panel-of-Inquiry-on-Lekki-incident-investigation-of-20th-October-2020.pdf>.

²⁰ ICNL, “Civic Freedom Monitor: Nigeria,” <https://www.icnl.org/resources/civic-freedom-monitor/nigeria>.

²¹ U.S. State Department, *Nigeria 2022 Human Rights Report* (2023), p. 21, https://www.state.gov/wp-content/uploads/2023/03/415610_NIGERIA-2022-HUMAN-RIGHTS-REPORT.pdf.

²² Human Rights Watch, “Nigeria: Crackdown on Police Brutality Protests” (Oct. 16, 2020), <https://www.hrw.org/news/2020/10/16/nigeria-crackdown-police-brutality-protests>.

²³ Amnesty International, “Nigeria: No justice for victims of police brutality one year after #EndSARS Protests” (Oct. 20, 2021), <https://www.amnesty.org/en/latest/news/2021/10/nigeria-no-justice-for-victims-of-police-brutality-one-year-after-endsars-protests/>.

second anniversary of these killings, police used tear gas to disperse protesters, who civil society observers state were gathering peacefully.²⁴

In **South Africa**, the right to protest is firmly established in South Africa law, and one respondent notes that “the authorities are not closing civic space or responding to protests in a way that fundamentally undermines the right.” The Regulation of Gatherings Act 1993 applies to the management of all gatherings, defined as including any assembly, concourse or procession of more than 15 persons in a public road or public place. However, the notification process, which involves interaction between the local authority, the police, and the demonstrator, has been less than successful in the face of municipal service delivery protests,²⁵ with permission to protest often denied by the local authorities who are the target of these demonstrations. These concerns have been raised with authorities by civil society and were recognised in the 2018 review of public order policing conducted by the Marikana Panel of Experts – a multi-disciplinary panel consisting of local and international policing experts established by the South African Cabinet in 2016, on the recommendation of the prior Marikana Commission of Inquiry, to examine systemic problems in policing highlighted by the August 2012 Marikana massacre, in which 34 striking miners were killed by members of the South African Police Service.²⁶

There is also a National Instruction 4 of 2014 on Public Order Police, Crowd Management During Public Gatherings and Demonstrations that applies to the South African Police Service (SAPS).²⁷ In terms of accountability, the SAPS National Instruction makes provision for detailed record-keeping of law enforcement operations relating to protests; the identification of officers engaged in these operations; and the independent investigation of any excessive force resulting in the death of demonstrators, or complaints as a result of the use of firearms (both of which the Independent Police Investigative Directorate are mandated to investigate under their Act). Other positive features of the National Instruction include:

- Acknowledgement that SAPS respects that everyone has the right to assemble peacefully and unarmed, to demonstrate, picket and present petitions;

²⁴ Chinedu Asadu, AP NEWS, “Nigeria: Police use tear gas on anniversary of fatal protest” (Oct. 20, 2022), <https://apnews.com/article/lagos-nigeria-africa-police-brutality-4d2425e976cc83c4017b2b60a2684c10>.

²⁵ Eunice Stoltz, MAIL & GUARDIAN, “Data shows that service delivery protests will increase, intensify in 2023” (Feb. 2, 2023), <https://mg.co.za/news/2023-02-02-data-shows-that-service-delivery-protests-will-increase-intensify-in-2023/>.

²⁶ Marikana Panel of Experts, *Panel of Experts Report on Policing and Crowd Management* (2018), https://www.saps.gov.za/resource_centre/publications/pannel_of_experts_2021.pdf.

²⁷ *National Instruction 4 of 2014: Public Order Police: Crowd Management during Public Gatherings and Demonstrations*, <https://protestguide.org.za/national-instruction.pdf>.

- Setting out a clear line of command to promote accountable crowd management;
- Requiring operational commanders to develop a plan for managing gatherings, including detailed risk assessments, established lines of communication, and required briefings and training in first aid for all members of an operation; and
- Assurances that operations will be recorded to promote accountability.

The Instruction further emphasizes the importance of de-escalation and dispute resolution; mandates that the use of force must be avoided at all costs, and that members of operations must display the highest degree of tolerance; and requires operational commanders to seek to build trust with crowds and their representatives.

In practice, however, implementation of the Instruction has been wanting, including as found in the Marikana inquiry process, and as demonstrated by the acquittal of the police officers charged with the death of Mthokozisi Ntumba during the Fees Must Fall protests.²⁸ The acquittal was impacted by challenges in the forensic investigation related to the use of rubber bullets, and has led to calls for stricter regulations around the use of rubber bullets and less lethal equipment in assembly contexts.

The Marikana Panel of Experts was established on the recommendation of the Marikana Commission of Inquiry convened as an extraordinary accountability mechanism following the 2012 massacre. Civil society provided inputs into the Commission proceedings, but there has been no substantive implementation of the Commission's recommendations (including as to prosecutions or other remedies).

Positive practices and strategies by law enforcement authorities that have supported the protection of human rights before, during, and after protests

Beyond the laws, guidance, protocols, and mechanisms described above, respondents identified additional practices deployed by law enforcement to protect protest rights.

²⁸ Jeannette Chabalala, NEWS24, "Mthokozisi Ntumba: Court acquits cops accused of his murder, family institutes R56m civil suit" (July 7, 2022), <https://www.news24.com/news24/southafrica/news/mthokozisi-ntumba-court-acquits-cops-accused-of-his-murder-family-institutes-r56m-civil-suit-20220707>.

IN A FEW COUNTRIES, RESPONDENTS WERE UNABLE TO IDENTIFY POSITIVE PRACTICES IMPLEMENTED BY LAW ENFORCEMENT AUTHORITIES TO PROTECT HUMAN RIGHTS IN CONNECTION WITH PROTESTS.

In **Burundi**, one respondent suggested that notwithstanding efforts to develop enabling laws (as described above), there have been no strategies adopted by law enforcement authorities that have supported the protection of human rights. Instead, even where legal measures have been adopted to comply with international norms, implementation of those norms has been assumed rather than affirmatively ensured. This respondent particularly points to stifling of judicial power and civil society activism by the executive as continuing to hamper the development of positive practices and strategies to implement these laws.

In **Honduras**, one respondent noted that notwithstanding the positive provisions of the the Law for the Protection of Human Rights Defenders and Justice Operators, which aims, *inter alia*, to ensure respect for the protection of Human Rights defenders in the context of demonstrations, there has been little will to support proper functioning of this law, and significant additional training of law enforcement and other officials is needed to enable this functioning.

In **Niger**, the respondent stated that no positive practices have been undertaken by law enforcement to facilitate respect for human rights during protests.

IN OTHER COUNTRIES FROM WHICH INPUTS WERE RECEIVED, RESPONDENTS IDENTIFIED SOME POSITIVE PRACTICES BY LAW ENFORCEMENT TO PROMOTE AND PROTECT HUMAN RIGHTS DURING PROTESTS, ESPECIALLY IN TERMS OF RECORD-KEEPING, DIALOGUE WITH PROTESTORS, TRAINING, AND OVERSIGHT AND ACCOUNTABILITY.

In **Chile**, respondents pointed to more than one positive practice adopted by law enforcement to safeguard human rights in the course of policing protests:

- The authorities maintain a record of equipment used, personnel deployed, and officials and civilians injured in the course of law enforcement operations pertaining to protests.
- Within the Carabineros, a Dialogue Agent is appointed to establish communications with the leaders of demonstrations, seeking information about their purposes and letting the leaders know that the police are there to take care of protest participants.
- The Carabineros also announced, on March 29, 2023, the deployment of officials qualified as human rights instructors who will wear blue helmets and support police services on the ground during demonstrations, with advice on

appropriate observance of protocols for respect of human rights, especially regarding the use of force.²⁹.

One respondent also noted that once a protest begins, observation of the protests is maintained by cameras and undercover agents, in order to identify persons committing crimes, and to report this information to Carabineros so that such persons can be arrested. This respondent suggested that application of these protocols has effectively enabled law enforcement to separate persons seeking to commit crimes from those intending to demonstrate peacefully.

It is worth emphasizing, however, that the UN Human Rights Committee, in its General Comment No. 37, states: “While surveillance technologies can be used to detect threats of violence and thus to protect the public, they can also infringe on the right to privacy and other rights of participants and bystanders and have a chilling effect.”³⁰ The General Comment also provides: “Any deployment of plain-clothed officers in assemblies must be strictly necessary in the circumstances and such officers must never incite violence.”³¹ The techniques of recording protests and using undercover officers to police protests must therefore be carefully applied consistent with international human rights principles and legal standards.

One respondent from The Gambia noted that in other African countries, such as **Ghana**, the police must seek a court order in order to impose restrictions on citizens’ right to protest, which provides an opportunity to have an impartial determination of the exercise of the right, with appropriate appeal processes and a level playing field for both the police and individuals affected by law enforcement decisions respecting protests. This respondent suggested that in **The Gambia**, the police are not subject to the judicial process to justify the exercise of their discretion to impose limits on protests, and instead may do so arbitrarily.

In **Kenya**, several respondents suggested that the Independent Policing Oversight Authority – a civilian oversight body overseeing the conduct of police during

²⁹ 24HORAS.CL, “¿Quiénes son los 'cascos azules' de Carabineros que debutarán este Día del Joven Combatiente?” (Mar. 29, 2023), <https://www.24horas.cl/actualidad/nacional/quienes-son-los-cascos-azules-de-carabineros-dia-del-joven-combatiente>.

³⁰ UN Human Rights Committee, General Comment No. 37, *supra* note 18, para. 10. The General Comment further states, at para. 61: “Any information gathering, whether by public or private entities, including through surveillance or the interception of communications, and the way in which data are collected, shared, retained and accessed, must strictly conform to applicable international standards, including on the right to privacy, and may never be aimed at intimidating or harassing participants or would-be participants in assemblies. Such practices should be regulated by appropriate and publicly accessible domestic legal frameworks that are compatible with international standards and subject to scrutiny by the courts.”

³¹ *Id.* para. 92.

protests³² – has been successful in holding individual police officers to account for violations, in contrast to the impunity of the past. One respondent suggested that reporting mechanisms are working, with offenders “often prosecuted and sentenced appropriately,” though this respondent suggested that IPOA and other oversight bodies should be made independent to protect them from political interference by the government. A second respondent noted that the effective functioning of the IPOA has been notwithstanding a lack of goodwill from the commanders of the law enforcement agencies, while a third commented on recent efforts by police to erode freedom of assembly, which have been opposed by civil society.

Another respondent stated that law enforcement officers in Kenya receive training in preparation for major protests so as to avoid the commission of violations, though these trainings are not consistently administered. One respondent did suggest, more broadly, that CSOs and the media are integral to efforts to prevent violations during protests, especially against the government, as without coverage of these protests, law enforcement and the executive would be inclined to suppress these demonstrations through use of excessive force.

In **Mexico**, one respondent noted that during recent demonstrations in Mexico City on International Women’s Day (March 8), female officers were assigned to manage the protest and facilitate the maintenance of order – though the respondent observed that this positive practice is not common, and that there is a need for significant additional training and professionalization of security agents tasked with maintaining public order during protests.

In **Nigeria**, one respondent noted that the Army has set up hotlines to receive complaints, in order to address infractions by troops in the course of deployments. According to this respondent, complaints have been consistently addressed, and “[p]rosecutions of erring Army personnel have been transparent, effective and speedily delivered.” Another respondent similarly noted that after the 2020 #EndSARS protests, the government constituted a panel of inquiry to prosecute “erring officers and civilians.” However, independent sources, including Amnesty International, have contended that these panels have been ineffective in delivering justice to victims of police brutality.³³ In particular, notwithstanding the findings of a judicial panel of inquiry established after the #EndSARS protests, which recommended disciplinary measures, dismissals, and prosecutions of army and police

³² Independent Policing Oversight Authority, <https://www.ipoa.go.ke/>.

³³ Amnesty International, “Nigeria: Two years on, more than 40 #EndSARS protesters still languishing in jail” (Oct. 20, 2022), <https://www.amnesty.org/en/latest/news/2022/10/nigeria-two-years-on-more-than-40-endsars-protesters-still-languishing-in-jail/>.

officers implicated in the 2020 killing of protesters in Lagos, authorities have failed to take further investigative or disciplinary action.³⁴

The first respondent above also suggested that while gaps remain in collaboration between the different security agencies in charge of ensuring the protection of human rights – in particular, between the police and the military – these gaps are being addressed through joint training and seminars in staff colleges and other institutions, in which civilians from the Ministry of Defense and representatives of paramilitary outfits have also been included. This respondent also observed that a gender desk has been established at the Army Headquarters.

In **South Africa**, under the terms of the Police Service Act of 1995, the National Commissioner is required to establish and maintain a national public order policing unit,³⁵ with the mandate of ensuring public order during public gatherings and demonstrations.³⁶ One respondent noted that this dedicated capacity has proved successful in the past in protecting the right to peaceful assembly, but encountered challenges when it was repurposed for general policing duties, and not maintained. One of the recommendations from the Marikana Commission of Inquiry is to re-establish and suitably train and equip this dedicated capacity.

In **Zambia**, two respondents noted that the police escort and provide security to peaceful protesters, and assist in controlling traffic to allow free movement by protesters. One respondent also suggested that the police consistently engage in dialogue with protesters, especially in order to put in place strategies to avert injuries in case of violence during protests.

³⁴ Human Rights Watch, “Nigeria: Prioritize Justice for Abuses Against Protesters” (Mar. 9, 2022), <https://www.hrw.org/news/2022/05/09/nigeria-prioritize-justice-abuses-against-protesters>. See also U.S. State Department, *Nigeria 2022 Human Rights Report*, *supra* note. 21, p. 4 (“While compensation was paid to some victims, as of December, the government had not announced further investigations or accountability measures regarding alleged security force killings in 2020 at the Lekki Toll Gate in Lagos.”).

³⁵ *South African Police Service Act, 1995*, Ch. 6 (“Organised Crime and Public Order Policing Unit”), https://www.gov.za/sites/default/files/gcis_document/201409/act68of1995.pdf.

³⁶ See *National Instruction # of 2012, Public Order Police: Crowd Regulation and Management during Public Gatherings and Demonstrations*, <https://justice.gov.za/comm-mrk/exhibits/Exhibit-GGG-22.pdf>.

Other measures, mechanisms, and actions that are needed to promote respect and protection of peaceful protest rights by law enforcement

Respondents identified several needed measures and practices, in addition to specific reforms to the legal frameworks governing the exercise of assembly rights, that could further promote respect and protection of peaceful protest rights by law enforcement:

- Intensive and ongoing training for law enforcement officers on human rights, particularly the right to assembly and protest; the duty of officers to protect protestors and the right to protest; and rights-based approaches to managing protests and peaceful assemblies, including protocols for the appropriate use of force as a last resort. Respondents emphasized that this training is necessary not only to inculcate a culture of respect for human rights within the police, but to bolster their capacity to manage protests, as well as violent or criminal behavior by those attending protests, in a rights-respecting way. Respondents urged that this training should begin within law enforcement academies and schools and continue throughout officers' careers, and foster joint collaborative efforts between law enforcement agencies as appropriate.
- Provision of appropriate equipment to law enforcement, to permit them to effectively manage protests while respecting human rights. One respondent underlined that small arms and light weapons should not be employed by law enforcement during management of peaceful protests.
- Engagement of protestors by law enforcement in the earliest stages of planned demonstrations, to facilitate protest rights and avoid confrontations.
- Accountability mechanisms to ensure law enforcement officers engaged in rights violations while policing protests face appropriate discipline.
- Greater independence among police services and transparency in terms of decision-making and operations, to permit rights-respecting management of peaceful protests without interference by top government officials.
- Establishment of committees or agencies responsible for ensuring compliance by law enforcement with applicable rights-respecting laws and protocols, including through regular performance evaluation of law enforcement units.
- Respect for the free expression of media covering protests and highlighting issues and violations by both police and demonstrators.
- Civic education for citizens on peaceful conduct of assembly rights.
- Provision for independent assembly monitors and marshals, who can act as observers during protests and be equipped to serve conflict resolution roles.