



NEW TECHNOLOGIES AND THEIR IMPACT ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF ASSEMBLIES

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FOR HUMAN RIGHTS (OCTOBER 2019)

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1. LAWS, POLICIES AND PROGRAMMES THAT HAVE BEEN DEVELOPED TO ADDRESS THE IMPACT OF NEW TECHNOLOGIES, INCLUDING INFORMATION AND COMMUNICATIONS TECHNOLOGY, ON HUMAN RIGHTS IN THE CONTEXT OF ASSEMBLIES, INCLUDING PEACEFUL PROTESTS

The ability of people to access communication technologies in a secure and private manner has become vital for the organization and conduct of peaceful assemblies and is an essential tool for effective human rights work.¹ Different international human rights mechanisms have highlighted the growing importance that the Internet plays in the exercise of human rights, including the right to freedom of peaceful assembly. The UN Human Rights Council adopted in 2013 a resolution stressing states' "obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline".² The UN Special Rapporteur on Freedom of Opinion and Expression, the African Commission Special Rapporteur on Freedom of Expression and Access to Information, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and the Organization of American states (OAS) Special Rapporteur on Freedom of Expression jointly declared that access to the Internet is necessary to promote respect for, among others, the right to freedom of peaceful assembly.³ Similarly, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasised the relevance of the Internet to the exercise of the right to freedom of peaceful assembly and has warned against regulations and practices that seek to curb the enjoyment of this right online, including the imposition of undue restrictions to the right to freedom of expression and opinion on the Internet.⁴

Restrictions on access to the internet have a widespread impact, one which can be particularly poignantly felt by younger generations as they are especially reliant on the internet for mobilising and communicating their common interests.⁵

One effort to put in place legal safeguards to mitigate impact on human rights, including the right to freedom of peaceful assembly, posed by technology is the recast of the EU Dual-Use Export Regulation. In 2016 the European Commission put forward a proposal to update controls that would enhance oversight of some EU surveillance exports in relation to their human rights risks. The

¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/38/34 (2018), para. 82.

² UN Human Rights Council, *Resolution on the rights to freedom of peaceful assembly and of association*, A/HRC/RES/24/5 (2013), para. 2.

³ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and African Commission Special Rapporteur on Freedom of Expression and Access to Information, *Joint declaration on freedom of expression and the Internet*, 1 June 2011, para. 6(b).

⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/38/34 (2018), para. 81, 84.

⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/38/34 (2018), para. 83 "A report issued under the mandate in 2014 indicated that, with youth being the most active social media users overall, restrictions placed on access to social media sites would disproportionately affect their ability to organize and mobilize for their common interests."

European Parliament has also debated this proposal, adding notable positive amendments. While the final form – if any – that the updated regulation will take is still unknown, Amnesty International and partners in the Coalition against Unlawful Surveillance (CAUSE) have advocated to ensure that loopholes in the proposal are closed and that the mechanism results in meaningful transparency and protection against the harms posed by unregulated surveillance. But regardless of the outcome of this proposal, Amnesty International wishes to emphasise the ongoing human rights law obligation of states to protect against abuses carried out by third parties such as companies, and the responsibility of companies under the United Nations Guiding Principles on Business and Human Rights to carry out human rights due diligence to respect human rights in relation to surveillance technology. In this context, the corporate responsibility to respect includes refraining from selling surveillance technology where there is a substantial risk that this technology will be used to violate human rights.

Strong encryption is also a key enabler of the right to freedom of peaceful assembly.⁶ States must refrain from efforts to “backdoor” encryption tools, or to restrict their use. In Belarus, activists stressed to Amnesty International that encryption tools were essential in their daily work to organize assemblies or conduct other work, such as solicit donor funds. Without such tools, activists would be in constant fear of legal repercussions in their efforts to plan assemblies, many of which are considered illegal under domestic law.⁷

In that regard, it is worrying the extent to which new legislation and policies are being enacted that limit the exercise of human rights, including the right to freedom of peaceful assembly and the intrinsically linked right to freedom of expression, for example:

LAWS, POLICIES AND PROGRAMMES THAT RESTRICT ACCESS TO THE INTERNET, SOCIAL MEDIA ETC.

Amnesty International documented 20 internet shutdowns in Central and West Africa in 2018, up from 12 in 2017 and 11 the previous year. For example, in Cameroon, a geographical shutdown was applied at the authorities request in the anglophone region of the country for several months. In Chad, users may not have been able to access WhatsApp, Facebook or other social media platforms for at least 300 days. In Mali, the authorities asked for connectivity to be restricted on the eve of presidential run-off elections in August 2018 and in Sierra Leone, there were multiple reports of temporary internet cuts after the close of polls in a presidential run-off election.

In Kashmir we have also seen widespread blocking of the internet and other forms of telecommunication services in 2019.

LAWS THAT CRIMINALIZE USE OF INTERNET OR SOCIAL MEDIA

While it is legitimate and even a duty of states to counter advocacy of hatred that constitutes incitement to discrimination, hostility or violence, the fight against such acts should not be used as a pretext to deprive people from using internet and social media as a means of self-organization and expression. The following examples are from Amnesty International's recent research:

⁶ Amnesty International, Encryption: A Matter of Human Rights, <https://www.amnesty.org/en/documents/pol40/3682/2016/en/>

⁷ Amnesty International, “It’s Enough for People to Feel it Exists”: Civil Society, Secrecy and Surveillance in Belarus, <https://www.amnesty.org/download/Documents/EUR4943062016ENGLISH.PDF>

⇒ Restrictive Legislation

BANGLADESH: MUZZLING DISSENT ONLINE: AMMEND THE DRACONIAN DIGITAL SECURITY ACT

The new Act is deeply problematic for three major reasons: ambiguous formulation of multiple sections that are dangerously vague in that they may lead to criminalizing of legitimate expression of opinions or thoughts; broad powers granted to authorities which are not clearly defined; and provisions which allow for removal or blocking of content and the seizure/ search of devices without sufficient safeguards.⁸

VIET NAM: NEW CYBERSECURITY LAW A DEVASTATING BLOW FOR FREEDOM OF EXPRESSION:

Viet Nam's new Cybersecurity Law gives broad new powers to the Vietnamese authorities, allowing them to force technology companies to hand over potentially vast amounts of data, including personal information, and to censor users' posts.⁹

⇒ Use of internet as an aggravating factor:

KAZAKHSTAN

In May 2014, a new piece of legislation was introduced into the Criminal Code which has been used by the authorities to stifle dissent. Article 274 of the Criminal Code now makes "dissemination of information known to be false" a criminal offence. This includes material disseminated over the internet. Indeed, the use of communication networks is an aggravating factor, leading to higher sentencing. A person convicted under Article 274 can face up to ten years' imprisonment.¹⁰

⇒ Use of social media to organize tribal assemblies:

HUMAN RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA :

Oman: In May 2018, the public prosecution affirmed it would take legal measures against tribal assemblies and anyone who assists or promotes these on social media.

LAWS THAT GRANT EXCESSIVE POWERS TO AUTHORITIES IN THE USE OF TECHNOLOGY: MASS DATA GATHERING AND STORAGE, INFILTRATION OF COMPUTERS AND PHONES WITH TROJANS FOR SURVEILLANCE PURPOSES.¹¹

POLAND: ON THE STREETS TO DEFEND HUMAN RIGHTS, HARASSMENT, SURVEILLANCE AND PROSECUTION OF PROTESTERS:

In July 2017, protesters celebrated the President's veto of two laws that would have further undermined the independence of the judiciary. At that time, two members of one of the most vocal grassroots activist groups Obywatele RP, Tadeusz Jakrzewski and Wojciech Kinasiewicz learned from the media that the police had them under physical surveillance for at least six days during the protests. Leaked police recordings confirmed that the surveillance was not carried out on the basis of suspicion of criminal wrongdoing, but was simply related to their participation in protests.

⁸ Amnesty International, "BANGLADESH: MUZZLING DISSENT ONLINE"

<https://www.amnesty.org/en/documents/asa13/9364/2018/en/>

⁹ Amnesty International, "Viet Nam: New Cybersecurity law a devastating blow for freedom of expression"

<https://www.amnesty.org/en/latest/news/2018/06/viet-nam-cybersecurity-law-devastating-blow-freedom-of-expression/>

¹⁰ Amnesty International . "Think Before You Post"

<https://www.amnesty.org/download/Documents/EUR5756442017ENGLISH.pdf>

¹¹ Amnesty International "HUMAN RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: REVIEW OF 2018"

<https://www.amnesty.org/en/documents/mde01/9433/2019/en/> p50

State regulation of surveillance significantly changed in January 2016, when an amendment to the Police Act introduced provisions on “operational” surveillance and collection of metadata. The law represents a departure from the previous regulation that permitted surveillance exclusively in the context of a criminal investigation. Poland’s Commissioner for Human Rights concluded that these changes to the Police Act were unconstitutional, and raised concerns over the lack of safeguards against interference with the right to privacy.¹²

2. EFFECTIVE USES OF SUCH TECHNOLOGIES AS ENABLERS OF THE EXERCISE OF HUMAN RIGHTS IN THE CONTEXT OF ASSEMBLIES, INCLUDING PEACEFUL PROTESTS (E.G. HOW NEW TECHNOLOGIES HAVE FACILITATED THE ORGANIZATION OF ASSEMBLIES, INCLUDING PEACEFUL PROTESTS);

Association and expression are increasingly facilitated by the internet, as is the potential importance of the internet both as a facilitator of physical assembly, and as a venue for assembly within its own right.

“Online groups simplify logistics, eliminate the need for bodily presence, and remove the burdens long associated with physical distance and national borders. Instead of being physically present to participate in a protest, one can send an avatar to a virtual site to join a virtual protest. This means of participation removes the risk of bodily harm or arrest and eliminates overhead for transportation, food, water, or shelter.”¹³

Therefore it is crucial for the right to freedom of peaceful assembly to be protected both in the online and offline spheres.¹⁴ Importantly, the UN Human Rights Council has noted that, although an assembly has generally been understood as a physical gathering of people, human rights protections for the right to freedom of peaceful assembly must be applied equally to analogous interactions taking place online.¹⁵

However, in many countries where human rights activists and defenders or opposition group feel under threat, they increasingly exercise self-censorship and deprive themselves from the means internet and social media offer to organize themselves and to speak out in public assemblies:

¹² Amnesty International, “POLAND: ON THE STREETS TO DEFEND HUMAN RIGHTS, HARASSMENT, SURVEILLANCE AND PROSECUTION OF PROTESTERS” p.23

²³<https://www.amnesty.org/en/documents/eur37/7147/2017/en/>

¹³ J. Inazu, ‘Virtual Assembly,’ *Cornell Law Review*, (2012) p.1108 .

¹⁴ See, inter alia, Committee of Ministers, Declaration on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers, (2011), https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805cb844

¹⁵ The promotion and protection of human rights in the context of peaceful protests, Resolution adopted by the Human Rights Council on 6 July 2018 (UN Doc. A/HRC/RES/38/11) p.2.

BEIJING'S RED LINE IN HONG KONG:

Musician Anthony Wong told Amnesty International that self-censorship among artists in China is very common on Facebook and Weibo, China's microblog platform:

We have a huge following [on social media]. Through the interaction and the online discussions, you could feel the "red line". When you use social media, you think about the "red line" very frequently – you think about what you should and should not say.

Wong used to have a Weibo account with more than 550,000 followers. He said his posts about Tiananmen and some natural disasters in China were deleted by the Weibo administrator and his account was permanently deleted in June 2014 after he posted about the civil referendum on the election of the Chief Executive held in June 2014.

"Oliver", a university student who took part in the protest on 12 June, discussed the impact of the comments made by Carrie Lam and Stephen Lo:

"Everyone deleted photos of themselves at the 12 June protest from social media as we were all afraid of being charged with rioting for just being there."¹⁶

KAZAKHSTAN: THINK BEFORE YOU POST: CLOSING DOWN SOCIAL MEDIA SPACE IN KAZAKHSTAN.:

The authorities took extensive measures to ensure that the protests planned for 21 May did not take place. Between 16 and 20 May, at least 34 people were arrested under Article 488 of the Administrative Offences Code ("Breach of the legislation of the Republic of Kazakhstan on the procedure for organizing and holding peaceful meetings, rallies, marches, pickets and demonstrations"), and given 10-15 days' administrative detention ... In most cases, all that the people arrested had done was use social media to state their intention to participate in the protests planned for 21 May, to provide information about the protests, or voice their support for them. ... The arrest and detention of these 34 people for their posts on Facebook and other social media sites were clearly designed to suppress information about the planned demonstrations on 21 May, in an effort to prevent them from going ahead, and to frighten people off from going out onto the streets.¹⁷

CUBA: YOUR MIND IS IN PRISON – CUBA'S WEB OF CONTROL OVER FREE EXPRESSION AND ITS CHILLING EFFECT ON EVERYDAY LIFE:

The widespread surveillance among Cubans has led many to self-censor out of fear and to refrain from exercising their rights to freedom of expression, association and peaceful assembly, a fear further compounded by the threat of prosecution as a result of these practices.¹⁸

¹⁶ Amnesty International, "BEIJING'S "RED LINE" IN HONG KONG"
<https://www.amnesty.org/en/documents/asa17/0944/2019/en/>

¹⁷Amnesty International, "KAZAKHSTAN: THINK BEFORE YOU POST: CLOSING DOWN SOCIAL MEDIA SPACE IN KAZAKHSTAN"
<https://www.amnesty.org/en/documents/eur57/5644/2017/en/>, pp 12 - 14.

¹⁸ Amnesty International "Cuba: Your mind is in prison – Cuba's web of control over free expression and its chilling effect on everyday life", <https://www.amnesty.org/en/documents/amr25/7299/2017/en/>

3. THE HUMAN RIGHTS CHALLENGES POSED BY INTERFERENCES WITH THE AVAILABILITY AND USE OF SUCH TECHNOLOGIES IN THE CONTEXT OF ASSEMBLIES, INCLUDING PEACEFUL PROTESTS (E.G. THROUGH NETWORKS DISRUPTIONS, BLOCKING OF INTERNET SERVICES OR RESTRICTIONS ON SECURE AND CONFIDENTIAL COMMUNICATIONS);

Internet shutdowns can have a notable chilling effect on the right to freedom of peaceful assembly, as they particularly undermine the ability of organizers to communicate and publicise the event, and to mobilize a large group of people in a prompt and effective manner.¹⁹ In a joint report to the Human Rights Council, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, stressed that the practice of blocking communications can have the effect of impeding the organization or publicizing of an assembly online.²⁰ They stressed that internet shutdowns rarely satisfy the requirements of necessity and proportionality, rendering them unlawful restrictions of the right to freedom of peaceful assembly.²¹ In this regard, the UN Special Rapporteur on Freedom of Opinion and Expression has specifically called on states to ensure that Internet access is maintained at all times, including during times of political unrest.²²

CHAD: BETWEEN RECESSION AND REPRESSION: THE RISING COST OF DISSENT IN CHAD:

Following public protests, on 18 February, social media platforms such as Facebook were shut down for a few days and the Minister of Public Security and Immigration, in a press briefing, accused student protestors of “being manipulated by groups of politicians who send children on the street as they themselves hide”. Declaring that “the festival of disorder is over”, he further reiterated the banning of any new gathering “without prior authorization of the Minister of Public Security and Immigration.”

Chadian authorities use surveillance methods to follow the activities of human rights defenders without providing the protections required by regional and international

¹⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/38/34 (2018), para. 82.

For examples, see Amnesty’s work in Gambia and Zimbabwe. *Dangerous to Dissent: Human Rights Under Threat in Gambia*

(<https://www.amnesty.org/en/documents/afr27/4138/2016/en/>); *Zimbabwe: Security forces must be held accountable for the brutal assault on human rights*

(<https://www.amnesty.org/en/latest/news/2019/01/zimbabwe-security-forces-must-be-held-accountable-for-the-brutal-assault-on-human-rights/>)

²⁰ Joint report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the proper management of assemblies, UN Doc. A/HRC/31/66 (2016), para. 75.

²¹ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66 (2016), para. 75.

²² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/17/27 (2011), para. 79.

standards, such as ensuring judicial oversight and the possibility of effectively challenging the lawfulness of such measures before a court.

Some HRDs and journalists also described how, after being arrested, ANS agents and the judicial police told them that they had listened to their calls and showed them a record of their phone conversations and SMS messages. Sources within private telecommunication companies in Chad confirmed the practices of phone tapping and monitoring calls, saying that the authorities justify it for national security reasons. One source said that phone surveillance equipment was replaced after Boko Haram's attacks on N'Djamena in June and July 2015, but that surveillance is not limited to those suspected of terrorism, but extends to any group – including civil society organisations - that may oppose the government. Such practices are not denied by the authorities, with the Minister of Public Security and Immigration affirming to Amnesty International that in Chad “you can be listened to and spied on - it's the job of security services”. Three state authorities including a senior government official told Amnesty International that “individuals should and could be listened to if their activities threaten to harm social cohesion.” To date, there is no law requiring judicial oversight for any surveillance activities. Further, the N'Djamena Public Prosecutor confirmed that he has never delivered a legal authorization for surveillance to any institution or individual.

In response to these surveillance tactics, human rights defenders increasingly use social media sites and messaging services such as Facebook, WhatsApp and Viber to share information and communicate. As described by one human rights activist, Abdelkerim Yacoub Koundougoumi, Coordinator of the citizen movement Project for a Credible [political] Change in Chad (Projet pour une Alternance credible au Tchad, PACT), “the internet has become the only space for freedom” for many activists in Chad. Yet that space has also been threatened by the Chadian authorities.

Throughout much of 2016, from before the Presidential election in April until the end of the year, the Chadian authorities restricted access to social media platforms and messaging services including Facebook and WhatsApp. The services could only be accessed by using a virtual private network (VPN) to bypass restrictions.²³

Shut down for speaking out: Human rights defenders at risk in West and Central Africa:

In the most severe restrictions to date, internet was shut down in the Anglophone regions of Cameroon from January to April 2017 following protests in the region about the use of French in courts and schools and demands for greater autonomy. In a statement issued in April, the Head of State finally ordered for internet to be restored after 94 days of blockage.²⁴

POLAND: ON THE STREETS TO DEFEND HUMAN RIGHTS, HARASSMENT, SURVEILLANCE AND PROSECUTION OF PROTESTERS:

In parallel to the legislative changes affecting the right to freedom of assembly, Amnesty International documented several cases of prosecutions or harassment of protesters that threaten to have a chilling effect on the freedom of assembly and expression.

In January 2017, the Warsaw police launched a public appeal to identify demonstrators caught on camera images from protests in front of the parliament on 16 and 17 December 2016. The protests were prompted by the new regulation restricting the access of media to the parliament. The authorities eventually refrained from implementing the restrictions after the

²³ Amnesty International, “HAD: BETWEEN RECESSION AND REPRESSION: THE RISING COST OF DISSENT IN CHAD”, <https://www.amnesty.org/en/documents/afr20/7045/2017/en/>

²⁴ Amnesty International, “SHUT DOWN FOR SPEAKING OUT” <https://www.amnesty.org/en/documents/act30/6170/2017/en/>

mass protests. According to the police statement accompanying the appeal published in January, people pictured on the images are being investigated in relation to the “public disturbances” during these protests.

The publication of the snapshots was criticised by NGOs voicing concerns over “chilling effect” on any future protests.²⁵

ETHIOPIA OFFLINE: EVIDENCE OF SOCIAL MEDIA BLOCKING AND INTERNET CENSORSHIP IN ETHIOPIA:

Testimonies gathered by Amnesty International from different parts of the Oromia region indicate that social media mobile applications such as Facebook, WhatsApp, and Twitter, were largely inaccessible since early March 2016, especially in the Oromia region, where residents were waging protests against the government since November 2015.

The Government blocked access to Facebook, Instagram, Twitter and Viber during the National University Exam week “to prevent students being distracted from studying during the exam period and to prevent the spread of false rumours”. Accordingly, those social media outlets were reportedly inaccessible throughout the country from 9-14 July 2016.

Internet services were also reportedly not available in Amhara, Addis Ababa and Oromia Regions following the call for region-wide protests on the weekend of 6 and 7 August 2016. During these two days, the government used excessive, including lethal force against protesters in Addis Ababa, Amhara and Oromia Regions resulting in the death of at least 100 people. Social media and mobile internet was also reportedly¹² unavailable from 5 October 2016 after protests in some parts of Oromia targeted businesses, investments, government buildings and security forces, during a proclaimed “week of rage”.

It is unlikely that social media played a crucial role in mobilizing the protests, given that internet penetration in the country remains very low at 2.9%. However, it has aided protesters in uncovering acts of violence committed by the security forces. Previous protests in the country, such as the April 2014 Oromo Protest against the Addis Ababa Master Plan and the Muslim protest against government interference in religious affairs since 2012 did not attract international media coverage. However, the current protests in Oromia and Amhara Regional States have gained a relatively greater media coverage due to the use of social media, even in very small towns, where witnesses have reported on events and the violence committed by the security forces, sometimes in real-time. For instance, the footage from the Irrecha tragedy on 2 October 2016 was available on social media platforms almost in real time.

Google traffic data depicts an acute decline of traffic on 6 and 7 August 2016, when there was a call by political activists for protests in Addis Ababa, Oromia, and Amhara. The internet shutdown tallied with the heavy-handed response of the security forces to the protests on these dates. Since social media was not accessible on those days in Amhara, Oromia and Addis Ababa there were very little reports at the time of the violence by the security forces. It was only after 8 August 2016 that pictures, footage, and reports of excessive force by security forces started to emerge on social media.²⁶

BELARUS: “IT’S ENOUGH FOR PEOPLE TO FEEL IT EXISTS”: CIVIL SOCIETY, SECRECY AND SURVEILLANCE IN BELARUS:

The crackdown that followed the widely-disputed 2010 elections saw numerous people arrested for the exercise of their human rights, including for participation in peaceful protests against the

²⁵ Amnesty International, “OLAND: ON THE STREETS TO DEFEND HUMAN RIGHTS, HARASSMENT, SURVEILLANCE AND PROSECUTION OF PROTESTERS”

<https://www.amnesty.org/en/documents/eur37/7147/2017/en/>

²⁶ Amnesty International, “ETHIOPIA OFFLINE: EVIDENCE OF SOCIAL MEDIA BLOCKING AND INTERNET CENSORSHIP IN ETHIOPIA” <https://www.amnesty.org/en/documents/afr25/5312/2016/en/>

outcome of the elections. The use of surveillance of mobile phone and internet data to track the identities of protestors and to prosecute opposition political leaders and others was a significant feature of this crackdown. Though Belarus has not seen a crackdown on this scale in the intervening years, these events, including several well-publicized prosecutions, were cited by many people who spoke to Amnesty International as a key reason why they believed they were not safe from state surveillance.

Following the post-election protests, numerous media outlets reported that the authorities used mobile phone data to determine who was present at the locations of protests, and to summon people who were detected there for interrogation.

In addition, several opposition candidates expressed their fears of surveillance in the run-up to the election, and several opposition candidates prosecuted following the elections had private communications used against them as evidence at trial. Former opposition presidential candidate Mikalai Statkevich was imprisoned for his role in peacefully protesting the 2010 elections, and was considered by Amnesty International to be a prisoner of conscience, until his release in August 2015. He told Amnesty International that during his interrogation, transcripts of his phone calls and Skype chats, as well as those of his friends and associates, were shown to him by his interrogators. He believes that these transcripts were obtained without a legal basis.²⁷

4. THE HUMAN RIGHTS CHALLENGES POSED BY THE USE OF NEW TECHNOLOGIES, INCLUDING INFORMATION AND COMMUNICATIONS TECHNOLOGY, IN THE CONTEXT OF ASSEMBLIES, INCLUDING PEACEFUL PROTESTS (E.G. THE USE OF SURVEILLANCE AND MONITORING TOOLS BY THE AUTHORITIES, INCLUDING BIOMETRICS-BASED RECOGNITION TECHNOLOGY TO IDENTIFY PROTESTORS);

The increasing adoption by law enforcement officials of new technologies, including the use of facial recognition, CCTV, IMSI catchers, and bodycams pose new risks to the right to freedom of peaceful assembly. This is especially true where such technologies are used in combination with one another as part of existing state surveillance and data retention powers. Amnesty International has documented numerous examples where use of such “surveillance technologies”, alone or in combination, not only have given rise to a violation or risk of violation of the right to freedom of peaceful assembly, but also have created or risked creating chilling effects that may deter people from exercising their rights in future.²⁸

²⁷ Amnesty International “BELARUS: “IT’S ENOUGH FOR PEOPLE TO FEEL IT EXISTS”: CIVIL SOCIETY, SECRECY AND SURVEILLANCE IN BELARUS” <https://www.amnesty.org/en/documents/eur49/4306/2016/en/>

²⁸ See Amnesty International, “Beijing’s ‘Red Line’ in Hong Kong: Restrictions on the Rights to Peaceful Assembly and Freedom of Expression and Association,” September 2019, <https://www.amnesty.org/en/documents/asa17/0944/2019/en/> (Police video-recorded activists and NGO staff using loudspeakers to lead or facilitate protests or meeting in cafes, p.30); “Belarus: ‘It’s Enough for People to Feel it Exists’: Civil Society, Secrecy and Surveillance in Belarus,” July 2016, <https://www.amnesty.org/download/Documents/EUR4943062016ENGLISH.PDF> (Activists and journalists told

Facial recognition technologies are increasingly being trialled or used by police and security forces to monitor public spaces, including demonstrations. These technologies generally compare live camera feeds of faces in real time against an existing 'watchlist' to locate persons of interest. Analysis has shown the significant flaws in these technologies, of the alerts the system generates over two thirds are false positives.²⁹ Irrespective of their accuracy, facial recognition technologies have the potential to be used for discrimination or ethnic profiling.³⁰ Furthermore, the use of such technologies may involve the widespread and bulk monitoring, collection, storage, analysis or other use of material and not be based on individualised reasonable suspicion, therefore constituting indiscriminate mass surveillance which is never a proportionate interference with the rights to privacy and freedoms of expression, association and peaceful assembly. Moreover, what could in effect amount to automatic compulsory registration of those attending an assembly could have a long-term chilling effect on the enjoyment of these rights. Facial recognition technologies should not therefore be deployed unless governments can demonstrate that they can be used in line with international law, including international human rights law and the principles of legality, proportionality and necessity.

It is well recognized that metadata constitutes "information that is no less sensitive, having regard to the right to privacy, than the actual content of communications".³¹ In the context of peaceful assembly, the variety of tools available to state authorities which can discern and retain metadata about the locations, movements, social networks, political affiliations and activities of participants, is likely to create a chilling effect on the future exercise of this right. When participants in a peaceful assembly are unable to know what information authorities at the assembly will be able to access regarding their criminal, immigration, or other personal histories, or for how long the records of their activities, associations or opinions are likely to be accessible to the authorities, they are more likely to hesitate before participating, to the detriment of human rights.

Under the United National Guiding Principles on Business and Human Rights, companies also have responsibilities to respect human rights. Amnesty International's research has shown that online violence and abuse against women on Twitter has led many women to self-censor, alter or limit their interactions online, or leave the platform altogether. Twitter's failure to put in place adequate measures for reporting and responding to this

Amnesty International how the widespread fear of surveillance makes it nearly impossible for them to carry out daily activities like sending emails, making phone calls or organising meetings or peaceful protests, Chapter 4, 'A Chilling Effect: Living with Surveillance, pp.13-29); "Poland: on the streets to defend human rights, harassment, surveillance and prosecution of protesters," October 2017, <https://www.amnesty.org/en/documents/eur37/7147/2017/en/> (Since July 2017, the Polish media and NGOs have been raising concerns over the surveillance of opposition politicians and protesters by the police and other security agencies. According to an NGO, Helsinki Foundation for Human Rights, the law enforcement services "employed a wide array of operational measures, including on-foot and vehicle surveillance teams technically capable of accessing municipal CCTV network and recording audio and video." p.17); "South Sudan: 'We are at risk and on the run': security agents track down peaceful protesters," July 2019, <https://www.amnesty.org/en/documents/afr65/0692/2019/en/> (Social media used by authorities to threaten people and to dissuade them from participating in protests, pp.6-7).

²⁹ For example, in the UK the London's Metropolitan Police Service (MPS) used automated facial recognition (AFR) at the annual Notting Hill Carnival in 2016 and 2017. The use of this technology by the MPS returned false positives in more than 98% of alerts generated according to a Freedom of Information request (see https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure_2018/april_2018/information-rights-unit---mps-policies-on-automated-facial-recognition-afr-technology). South Wales Police has been using AFR since May 2017, including at sporting events and concerts. The AFR system used by South Wales Police has returned confirmed false positives at a rate of at least 50% from its new algorithm. Its previous algorithm returned false positives at a rate of at least 72%.

³⁰ For example, in a study by the American Civil Liberties Union in July 2018, the facial recognition tool, called "Rekognition", incorrectly matched 28 members of Congress, identifying them as other people who have been arrested for a crime. The false matches were disproportionately of people of colour, including six members of the Congressional Black Caucus (see ACLU, Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots, 26 July 2018, <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28>).

³¹ *Tele2 Sverige AB and C-698/15 Watson and Others* (ECLI:EU:C:2016:970) ("Watson") Court of Justice of the European Union, Joined Cases C-203/15 at para. 99.

violence and abuse means that many women are not able to exercise their rights – including their right to freedom of peaceful assembly – on the basis of equality, and constitutes a breach of the company's responsibility to respect human rights.³²

5. THE IMPACT ON HUMAN RIGHTS OF THE USE OF NEW LESS-LETHAL WEAPONS AND AMMUNITION TECHNOLOGY IN THE CONTEXT OF ASSEMBLIES, INCLUDING PEACEFUL PROTESTS.

Weapons technology used in the course of public assemblies constantly evolves and more and more sophisticated weapons are being developed. In many instances, such weapons are developed and proposed by private companies without a clearly defined operational law enforcement purpose. As a result, they are then often deployed not because of their operational advantage, but rather because of their availability on the market. This has all too often resulted in serious injury or even death.

Law enforcement authorities should only decide and deploy on new technology based on the following considerations:

In order to fulfil their duties, law enforcement agencies should have a range of less lethal weapons and equipment at their disposal that allows for a differentiated use of force in full respect of the principles of necessity and proportionality,³³ and to ensure that harm and injury are kept to the minimum.

The decision on the type of weapons and ammunition to be used by law enforcement officials must be based on an assessment of operational policing needs and technical requirements, taking into account the weapons' accuracy, their effectiveness at achieving the law enforcement objective, the risk of being discharged involuntarily, the type of injuries they may cause, and the risks involved to third persons.³⁴

As part of the legal review, testing should be conducted independently of the manufacturer and in accordance with recognised standards. A multidisciplinary approach should be taken with the weapon's use constantly monitored. The decision to use them must be revised in view of their effectiveness and/or the emergence of unexpected/excessive risks.³⁵ The results of the testing should be made public. Newly procured weapons should be assessed and evaluated in a pilot program and assessed in consultation with medical experts, scientists, human rights defenders and other relevant stakeholders.

Each device should be accompanied by clear protocols with instructions as to the situations in which, and how, it should be used, explaining the effects and risks of the device and the necessary precautions to be

³² Amnesty International, Toxic Twitter, <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/>

³³ UN BPUFF, Principle No. 2: "Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind".

³⁴ Amnesty International - The Netherlands, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, August 2015, Guideline No. 6 (on development, testing, selection and evaluation of less lethal weapons).

³⁵ UN Human Rights Council, Resolution on the promotion and protection of human rights in the context of peaceful protests, UN Doc. A/HRC/RES/25/38, para. 15.

taken, as well as warnings on the circumstances or situations in which the device may not be used. Law enforcement officials must have received adequate training and certification on the device as a precondition for being allowed to use the device.

Preventing unnecessary damage and escalation needs to be taken into account when authorities are determining what equipment should be used in public assemblies (including for the purpose of dispersing assemblies). The accuracy of weapons or other equipment and the risks for demonstrators as well as uninvolved persons are important considerations to that end.

Safeguards should aim to prevent risks to third persons, and misuse or abuse in practice. Equipment or weaponry that is so inaccurate as to cause significant and indiscriminate injuries, or that may cause disproportionate levels of harm should be excluded. Law enforcement agencies should ensure that all devices deployed to their officials are accompanied by clear instructions as to when and how they may be used, along with a description of effects and risks, and necessary precautions that should be taken. Further, they should establish piloting processes for new devices to see whether they meet operational needs and technical requirements and whether instructions and training on their use were adequate. The use of any device must be subjected to pre-established thorough and rigorous reporting, supervision and control mechanisms that continually evaluate the effectiveness and effects of the device.

SPECIFIC WEAPONS:

KINETIC IMPACT PROJECTILES

There is an increasing variety of kinetic impact projectiles being developed and used in public order situations (from rubber bullets, rubber balls, round batons, to multiple projectiles and projectiles with combined effects etc). Their use should be the subject of clear instructions relating to range and targeting, never used for dispersal and only used against persons engaged in violence against another person; they should never be shot indiscriminately into a crowd; should not be fired to bounce off the ground, and should only be aimed at the lower torso or legs.

In that regard, multiple projectiles, such as metal pellets and similar ammunitions, are far too inaccurate, their use cannot comply with the principles of necessity and proportionality, and therefore they should be prohibited in crowd control situations.

Certain projectiles with combined effects – impact, light, an explosion and / or the release of a chemical irritant – can have serious consequences that are difficult to predict and are likely to cause excessive harm. Their use should be prohibited in the context of crowd control.

FRANCE: CALL FOR THE BANNING OF GRENADES GLI-F4 IN THE CONTEXT OF POLICING PROTESTS:

Teargas grenades GLI-F4 (produced by S.A.E Alsetex) contain teargas and TNT explosive and has a combined blast and deafening effect, measured at 165db when they explode at a distance of 5 metres. They can be launched manually or fired with a launcher. In 2014, the Minister of Interior amended the rules concerning the use of the grenade GLI-F4. In particular, the grenade GLI-F4 should be used by law enforcement officials in pairs in view of improving the assessment of the situation on the ground and of the risks associated with the use of the weapon. At the same time, the Minister banned the use of another type of grenade, which also contained TNT explosive (grenade OF F1), for policing public assemblies, in the aftermath of the death of a peaceful protester, Rémi Fraisse, after having been hit by this type of grenade. In June 2018, media reports indicated that the Minister of Interior had decided to not replenish the stock of grenades GLI-F4, which however would continue to be used for policing demonstration until the exhaustion of the current stock.

The risks associated with the use of the tear gas grenade GLI-F4 are due to the multiple purposes of the weapon. In particular, the purpose of dispersing protesters, for which this weapon is being used, is at odds with the blast effect that it produces and which may prevent protesters from promptly dispersing. In 2017, the Ombudsperson emphasized that the use of the tear gas grenade GLI-F4 for policing demonstrations remained problematic in view of its hazardous materials that it contained.

ELECTRIC SHOCK WEAPONS AND DEVICES

Projectile electric shock weapons (PESWs) may only be used in order to prevent the loss of life or risk of serious injury and to avoid the use of a firearm, and only where other less coercive methods have failed or are impracticable. Such weapons should never be used for the sole purpose of securing compliance with an order.³⁶ PESWs should not be used for the purpose of dispersing a crowd, but rather only in the most serious situations against individuals who present a serious threat of causing serious injury or loss of life.

INDISCRIMINATE WEAPONS

Some less lethal weapons, such as malodorants, optical and acoustic weapons, pose particular risks which have been insufficiently researched. Their circumstances of use (distance, volume/frequency etc.) and their indiscriminate nature – the fact that they cannot differentiate between peaceful protestors and those that are engaged in violence - raise serious concerns. Their use should therefore be suspended until robust, independent research can guarantee that they can be deployed lawfully.

SEMI-AUTONOMOUS SYSTEMS:

Semi-autonomous systems that deliver force through remote control, or automatically, may only be authorised for use during public assemblies where it can be ensured that such use would comply with international law, in particular international human rights law. The latter requires that there must be at any moment of the operation the respect of the principles of legality, necessity and proportionality. Individual personal accountability must be possible for any decision taken at any moment.

The use of drones equipped with chemical irritants should be prohibited since they bear considerable risks without any effective operational advantage: In view of the height from which chemical irritants are released from the drone as well as the possible impact of wind and weather conditions at that height, the amount of irritant needed is particularly high, with a heightened risk for the health of anybody in the area. Chemical irritants should only be used in case of widespread violence in order to disperse the crowd, in a manner that gives people the opportunity to disperse safely and a clear orientation as to the direction in which they should be dispersing. Drones releasing tear gas from above do not give such opportunity or orientation, since people might not know in which direction to disperse. This increases the risk of panic and can even cause a stampede and is likely to rather cause more chaos and harm to people, rather than restoring public order.

ISRAEL: ISRAEL/OPT: ISRAELI FORCES MUST END THE USE OF EXCESSIVE FORCE IN RESPONSE TO “GREAT MARCH OF RETURN” PROTESTS ³⁷

Among those injured since Friday 30 March, there were around 445 children, at least 21 members of the Palestinian Red Crescent’s emergency teams, and 15 journalists. According to the Ministry of Health in Gaza, some 1,236 people have been hit by live ammunition. Others have been injured by rubber bullets or treated for tear gas inhalation dropped by drones. The World Health Organization expressed concern that nearly 350 of those injured may be temporarily or permanently disabled as a result of their injuries.

³⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *CPT Standards*, (CPT/Inf/E (2002) 1 - Rev. 2015), pp. 109, 112.

³⁷ Amnesty International, *Combating torture, The Need for Comprehensive Regulation of Law Enforcement Equipment*, ACT 30/9039/2018, <https://www.amnesty.org/download/Documents/ACT3090392018ENGLISH.PDF>, p. 22.

AUTONOMOUS WEAPONS SYSTEMS:

The rapid development of autonomous weapons systems (AWS) could not only change the entire nature of warfare, it could also dramatically alter the conduct of law enforcement operations and raises extremely serious human rights concerns, including threats to the right to freedom of peaceful assembly. Indeed, as then UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted:³⁸

“On the domestic front, AWS could be used by states to suppress domestic enemies and to terrorize the population at large, suppress demonstrations and fight “wars” against drugs. It has been said that robots do not question their commanders or stage coups d’état.”³⁹

As it is unlikely that AWS without meaningful and effective human control could ever reach the human levels of judgement required in the lawful conduct of law enforcement, it is improbable that AWS could comply with international standards governing the use of force in law enforcement situations. It is particularly doubtful that the guiding human rights principles of legality, necessity and proportionality could be adhered to by AWS.

AWS without meaningful and effective human control would not have the capacity to correctly assess complex policing situations and comply with international standards, in particular the principles of necessity and proportionality. In addition, unlike highly trained and strictly accountable law enforcement personnel, robots could not by themselves distinguish between legal and illegal functions, or make decisions regarding the use of force, thereby seriously undermining accountability and the right to an effective remedy for arbitrary, abusive and excessive uses of force. Given the potentially grave consequences of such technology and states’ existing obligations under international human rights law and international humanitarian law, Amnesty International is calling for a pre-emptive ban on the development, production, and use of fully AWS.

On 27 September 2018 the European Parliament passed a resolution calling for an international ban on lethal autonomous weapon systems and ensuring meaningful human control over the critical functions of selecting and attacking individual targets. The resolution calls for the start of negotiations on an international treaty that would prohibit lethal autonomous weapons systems. In addition, the resolution elaborates on why these weapons should be banned, underlining that lethal autonomous weapons have the potential to fundamentally change warfare by prompting an unprecedented and uncontrolled arms race. These weapons raise fundamental ethical questions and their use would raise key questions about the implementation of international human rights law and international humanitarian law, specifically that “robots cannot make human-like decisions involving the legal principles of distinction, proportionality and precaution.”⁴⁰ It also affirms that international law, including international humanitarian law and human rights law, fully applies to all weapons systems and their operators.

Amnesty International therefore recommends that AWS, which can select, attack, injure and kill targets without meaningful human control, should be prohibited. This call would be consistent with the recommendation made in February 2016 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies.⁴¹

³⁸ Report to the Human Rights Council, Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/23/47. [Error! Hyperlink reference not valid.](#)

³⁹ Report to the Human Rights Council, Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/23/47, p. 16.

⁴⁰ European Parliament resolution of 12 September 2018 on autonomous weapon systems (2018/2752(RSP))

⁴¹ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 67(f).

SUMMARY ON LESS LETHAL WEAPONS

In view of the threats to the right to life and serious injury emanating from the use of less lethal weapons and equipment in law enforcement, Amnesty International calls law enforcement authorities to ensure appropriate regulation of such weapons and training in their use.

It is important for such weapons to be subjected to rigorous independent testing before a decision is made to make them available for use in law enforcement. Training in their use is crucial and must include training not only in the technical skill required to use the weapon, but also in the surrounding context of a law enforcement official's duties – that is, the obligation to attempt non-violent means first, human rights and the ethics of use of force, as well as communication, de-escalation and negotiation, and minimum use of force. In that regard in referring to the international protocols for their use, it would be important to refer explicitly to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Certain types of weapons, conventionally regarded as 'less lethal', but with regard to which there are known risks of serious harm, such as rubber-coated bullets and multipurpose projectiles⁴² should be generally prohibited in public order management. The use of other less lethal weapons - those that can play a legitimate role in law enforcement - must be stringently regulated.

AWS, which can select, attack, injure and kill targets without meaningful human control, should be prohibited.

October 2019

⁴² African Commission on Human and Peoples' Rights, Policing Assemblies in Africa: Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, para. 21.2.5.