
Warsaw, 7 November 2023
Opinion-Nr.: FOPA-MDA/486/2023 [NR]

URGENT OPINION ON THE LAW ON ASSEMBLIES

MOLDOVA

This Urgent Opinion has benefited from contributions made by Jane Gordon, Senior Human Rights Lawyer and Criminal Justice Policy Advisor, and member of the ODIHR Panel of Experts on Freedom of Assembly and Association, and was peer reviewed by the members of the [ODIHR Panel of Experts on Freedom of Assembly and Association](#).

The Urgent Opinion was also prepared in consultation with Mr. Clément Voule, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, as part of the [Framework for Joint Action for the protection and promotion of civic space](#).

Based on an unofficial English translation of the Law from an online source.



OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00, Fax: +48 22 520 0605
www.legislationline.org

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The freedom of peaceful assembly is recognized as a fundamental right in a democratic society and should be enjoyed, as far as possible, without (or with minimal) regulation. Assemblies must only be regulated to the extent that there is a pressing social need to do so within the permissible limits established in Article 11(2) of the European Convention on Human Rights and Article 21 of the International Covenant on Civil and Political Rights. Defining an event as an ‘assembly’ does not, for that reason alone, justify State regulation.

The 2008 Law on Assemblies of the Republic of Moldova (hereinafter “the 2008 Law”) under review overall provides a favourable legal framework for the exercise of freedom of peaceful assembly in the Republic of Moldova. Therefore, any reform process should ensure that laws and their implementing legislation effectively aim at facilitating and protecting the right to freedom of peaceful assembly, rather than to inhibit the enjoyment of the right.

A number of provisions of the Law could be enhanced to better frame the duty of public authorities to facilitate the exercise of the right to freedom of peaceful assembly, especially with respect to spontaneous and non-notified assemblies and long-term demonstrations. Given the developments in the digital field since the adoption of the Law, it is also important for the Law to reflect the relevance of digital technologies for the facilitation and organization of assemblies, and to provide safeguards against the application of surveillance and monitoring measures prior to and during assemblies.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further enhance the Law and its compliance with international human rights standards and OSCE human dimension commitments:

- A. With respect to the restrictions of assemblies:
 1. to amend Article 10 to recognize that not all assemblies may have identifiable organizers ; [para. 42]
 2. to explicitly exempt spontaneous assemblies from prior notification requirements ; [para. 44]
 3. to specify in Article 12 (4) the grounds that may be invoked by a local authority to challenge the holding of a spontaneous assembly in court; [para. 45]
- B. to amend Article 22 to state that assemblies will only be dispersed as a measure of last resort and to set out the strict circumstances when the local public administration authority may request (i) an assembly organizer to cease an assembly or (ii) assembly participants to disperse; [para. 70]
- C. to include in the Law an explicit reference to the liability of law enforcement or public officials while including a duty to investigate any alleged abuse of power or violations of the Law by law enforcement or other public authorities, either

by inserting an express provision in the law or through a reference to other relevant legislation; [paras. 73 and 75]

D. With respect to surveillance and monitoring of assemblies:

1. to supplement Article 17(1) by express provisions regarding data collection and processing and limitations on data storage and retention, either by inserting provisions in the text of the Law or making cross-references to other relevant legislation; [para. 82] and
2. to ensure that 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, processed and accessed, strictly conform to applicable international privacy and personal data protection standards, and may never be aimed at intimidating or harassing participants or would-be participants in assemblies; [para. 85].

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

TABLE OF CONTENTS

I. INTRODUCTION	5
II. SCOPE OF THE OPINION	5
III. LEGAL ANALYSIS AND RECOMMENDATIONS	6
1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments	6
2. Background.....	8
3. Definitions and Scope of the Law	8
3.1. Definitions of Assemblies and Key Principles	9
3.2. Scope of the Law.....	10
4. Restrictions Prior to an Assembly.....	12
4.1. Restrictions on Who May Organize Assemblies.....	12
4.2. Grounds for Prohibiting Assemblies.....	13
4.3. Notification	15
4.4. Location	16
4.5. Procedure for Modification to Holding of Assemblies and Prohibiting Assemblies.....	17
5. Obligations of Organizers and Participants of Assemblies and Law Enforcement	18
5.1. Liability for Violating the Law	20
6. Forced Dispersal	20
7. Liability of Law Enforcement and Public Officials.....	22
8. Monitoring and Surveillance of Assemblies.....	23
9. The Exercise of the Right to Freedom of Peaceful Assembly during a State of Emergency.....	25
10. Recommendations Related to the Process of Preparing and Adopting Amendments to the Law.....	26
 ANNEX: <u>Law No. 26-XVI of 2008 on Assemblies of the Republic of Moldova</u> (as last amended in 2018)	

I. INTRODUCTION

1. On 22 September 2023, the General Police Inspectorate of the Ministry of Internal Affairs of Moldova requested the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) to assist with the legal review of the Law No. 26-XVI of 2008 on Assemblies of the Republic of Moldova (hereinafter “the 2008 Law”).¹
2. On 10 October 2023, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal analysis on the compliance of this Law with international human rights standards and OSCE human dimension commitments.
3. The General Police Inspectorate informed about its intention to hold public consultations with civil society at the beginning of November to discuss the reform of the 2008 Law and requested that the legal review be finalized before. Given the short timeline to prepare this legal review, ODIHR decided to prepare an Urgent Opinion on the 2008 Law, which does not provide a detailed analysis of all the provisions of the 2008 Law but primarily focuses on the most concerning issues relating to the exercise of the right to freedom of peaceful assembly. The absence of comments on certain provisions of the 2008 Law should not be interpreted as an endorsement of these provisions.
4. This Urgent Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.²

II. SCOPE OF THE OPINION

5. The scope of this Urgent Opinion covers only the 2008 Law submitted for review. Thus limited, the Urgent Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the exercise of the right to freedom of peaceful assembly in Moldova.
6. The Urgent Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the 2008 Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments.
7. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*³ (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*⁴ and commitments to mainstream gender into OSCE activities, programmes and projects, the Urgent Opinion integrates, as appropriate, gender and diversity perspectives.

¹ Available at <[LP26/2008 \(legis.md\)](#)>.

² In particular [CSCE/OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#), 29 June 1990, para. 9.2; and Charter of Paris for a New Europe (1990).

³ *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Moldova acceded to this Convention on 1 July 1994.

⁴ See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

8. This Urgent Opinion is based on an unofficial English translation of the 2008 Law, which is attached to this document as an Annex. Errors from translation may result. Should the Urgent Opinion be translated in another language, the English version shall prevail.
9. In view of the above, ODIHR would like to stress that this Urgent Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Moldova in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

10. The right to freedom of peaceful assembly has been recognized as one of the foundations of a democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs can gather together and interact peacefully with one another. The right to freedom of peaceful assembly can thus help give voice to minority opinion and bring visibility to marginalized and under-represented groups. States have a positive obligation to respect, protect and facilitate the exercise of the right to freedom of peaceful assembly. Effective protection of the right to freedom of peaceful assembly can help foster a culture of open democracy, enable non-violent participation in public affairs, and invigorate dialogue on issues of public interest. Public assemblies can also help ensure the accountability of corporate entities, public bodies and government officials and thus promote good governance in accordance with the rule of law.
11. The right to freedom of peaceful assembly as elaborated by international human rights law is considered a fundamental democratic right in several core human rights documents, including Article 20 (1) of the Universal Declaration on Human Rights (UDHR),⁵ Article 21 of the International Covenant on Civil and Political Rights (ICCPR),⁶ Article 11 of the European Convention on Human Rights (ECHR),⁷ Article 15 of the Convention on the Rights of the Child (CRC)⁸ and Articles 1 and 21 of the UN Convention on the Rights of Persons with Disabilities.⁹ The General Comment no. 37 of the UN Human Rights Committee (UN HRC)¹⁰ also offers authoritative interpretation of the nature and scope of the right to freedom of peaceful assembly along with the jurisprudence of the UN Human Rights Committee. The case law of the European Court of Human Rights (ECtHR) provides additional guidance for Council of Europe Member States on how to ensure that their laws and policies comply with key aspects of Article 11 of the ECHR.¹¹ Any restriction on the right to freedom of peaceful assembly must be compatible with the strict test set out in Article 21 of the ICCPR and Article 11(2) of the ECHR, requiring any restriction to have a formal basis in law, in the pursuit of one of the

⁵ [Universal Declaration on Human Rights](#) (UDHR), adopted by [General Assembly resolution 217 A](#) on 10 December 1948.

⁶ [International Covenant on Civil and Political Rights](#) (ICCPR), adopted by UN General Assembly Resolution 2200A (XXI) on 16 December 1966. The Republic of Moldova acceded to the ICCPR on 26 January 1993.

⁷ [Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms](#), Article 11, signed on 4 November 1950, entered into force on 3 September 1953. The Republic of Moldova ratified the ECHR on 12 September 1997.

⁸ [UN Convention on the Rights of the Child](#) (CRC), adopted by General Assembly resolution 44/25 of 20 November 1989. The Republic of Moldova acceded to the CRC on 26 January 1993.

⁹ [Convention on the Rights of Persons with Disabilities](#) (CRPD), adopted by General Assembly resolution 61/106 of 13 December 2006. The Republic of Moldova ratified the CRPD on 21 September 2010.

¹⁰ UN Human Rights Committee, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), CCPR/C/GC/37, 17 September 2020.

¹¹ See the [ECtHR Caselaw Guide on Article 11 of the ECHR](#), prepared by the Registry of the ECtHR (as of 31 August 2022).

legitimate aims listed exhaustively in the treaty/convention,¹² necessary in a democratic society, which presupposes the existence of a “pressing social need” and respect for the principle of proportionality. In addition, the restriction must be non-discriminatory (Articles 2 and 26 of the ICCPR and Article 14 of the ECHR and Protocol 12 to the ECHR).

12. OSCE participating States committed to respecting the right to freedom of peaceful assembly as stated in the Copenhagen Document.¹³ Further OSCE commitments regarding the right to peaceful assembly include the 1990 Charter of Paris for a New Europe¹⁴ and the Helsinki 2008 Statement from the Ministerial Council.¹⁵ ODIHR and its Panel of Experts¹⁶ in consultation with the Council of Europe’s European Commission for Democracy through Law (Venice Commission) have also developed joint Guidelines on Freedom of Peaceful Assembly (hereinafter “FoPA Guidelines”),¹⁷ which are based on international and regional treaties, case-law and other documents related to the protection of human rights as well as the practice in other democratic countries adhering to the rule of law. These Guidelines provide useful guidance for developing and implementing national legislation on the right to freedom of peaceful assembly in accordance with international standards and OSCE human dimension commitments.
13. A wide range of different public gatherings fall within the scope of freedom of peaceful assembly, including planned and organized assemblies, unplanned and spontaneous assemblies, static assemblies (such as public meetings, ‘flash mobs’, sit-ins and pickets), and moving assemblies (including parades, processions, and convoys).¹⁸ The presumption in favour of (peaceful) assemblies includes an obligation of tolerance and restraint towards peaceful assemblies in situations where legal or administrative procedures and formalities have not been followed. States have a positive duty to facilitate and protect the exercise of the right to freedom of peaceful assembly and this duty should be reflected in the legislative framework and relevant law enforcement regulations and practices.¹⁹
14. The right to freedom of peaceful assembly complements and intersects with other civil and political rights, including the right to freedom of expression (Article 19 of the ICCPR and Article 10 of the ECHR), the right to freedom of association (Article 22 of the ICCPR and Article 11 ECHR), the right to participate in public affairs (Article 25 (a) of the ICCPR) and the right to vote (Article 25 (b) of the ICCPR and Article 3 of Protocol No. 1 to the ECHR). Moreover, the right to freedom of peaceful assembly may overlap with the right to manifest one’s religion or belief in community with others.²⁰ Recognizing the interrelation and interdependence of these different rights is vital to ensuring that the right to freedom of peaceful assembly is afforded practical and effective protection.

12 i.e., national security, public safety, public order (ordre public) for Article 21 ICCPR or the prevention of disorder or crime for Article 11 (2) of the ECHR, the protection of public health or morals, and the protection of the rights and freedoms of others.

13 [CSCE/OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#), 29 June 1990, para. 9.2, whereby OSCE participating States reaffirmed that “(9.2) everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standard”; and Charter of Paris for a New Europe (1990), where they affirmed that “without discrimination, every individual has the right to (...) freedom of association and peaceful assembly”.

14 Adopted by the meeting of heads of state or government of the CSCE, 21 November 1990 (preamble).

15 Adopted by the sixteenth Helsinki Ministerial Meeting on 4 and 5 December 2008 (p. 5).

16 See <[ODIHR Panel of Experts on Freedom of Assembly and Association](#)>.

17 See ODIHR-Venice Commission, [Guidelines on Freedom of Peaceful Assembly](#) (3rd edition, 2019), subject to editorial revisions (hereinafter “FoPA Guidelines”).

18 *Ibid.*, para. 44 (FoPA Guidelines).

19 *Ibid.*, para. 22 (FoPA Guidelines).

20 See e.g., ECtHR, [Barankevich v. Russia](#), no. 10519/03, 26 July 2007.

2. BACKGROUND

15. The right to assembly is provided for in Article 40 of the Constitution of the Republic of Moldova. This provision specifies that meetings, demonstrations, manifestations, processions, or any other assembly are free and may be organized and conducted only peacefully, without the use of any kind of weapon.
16. The Law No. 26-XVI on Assemblies under review was adopted on 22 February 2008, and has been amended once in 2018. In August 2007, ODIHR had been requested by the Ministry of Justice to review the then draft Law of the Republic of Moldova on Assemblies and published its *Opinion on the Draft Law of the Republic of Moldova on Assemblies* in September 2007.²¹ This 2007 Opinion concluded that overall, the Draft Law created a favourable legal framework for the exercise of freedom of peaceful assembly and welcomed the provisions enabling the application of the presumption in favour of holding assemblies and allowing the dispersal of public assemblies only as a measure of last resort, although making a number of recommendations for improvement. The adopted Law addresses some of the concerns raised in ODIHR's 2007 Opinion, including by clarifying the wording of some of the principles, providing a definition of an assembly, extending the scope of application of this freedom to everyone rather than citizens only, revising the provisions on restrictions to the right, including the notification period. Thus, this Urgent Opinion builds on the observations made in the 2007 ODIHR Opinion, but also reviews the 2008 Law from the perspective of legal developments that have taken place since the adoption of the Law.
17. It is noted that since February 2022, a state of emergency has been in force in Moldova. The Republic of Moldova has notified the Council of Europe about its intention to derogate from certain provisions of the ECHR, referring to a number of measures envisaged to be implemented during the period of state of emergency, including the prohibition on holding rallies, public demonstrations and other mass actions.²² The issue of the exercise of the right to freedom of peaceful assembly during a state of emergency is distinct from the reform of the 2008 Law, which is analysed in this Urgent Opinion from the perspective of its longer term application, in time of peace, in accordance with the standards that are applicable when not derogated from applicable human rights obligations or when no emergency measures apply. At the same time, Sub-Section 10 of the Urgent Opinion will elaborate on the parameters for exercising the right to freedom of peaceful assembly during a state of emergency. Also, legislating on such a fundamental piece of legislation during a state of emergency may present some challenges as further elaborated in Sub-Section 11 *infra*.

3. DEFINITIONS AND SCOPE OF THE LAW

18. At the outset, it must be stressed that the freedom of peaceful assembly is recognized as a fundamental right in a democratic society and should be enjoyed, as far as possible, without (or with minimal) regulation,²³ unless there is a need for special protection, and without undue limitations. Moreover, defining an event as an 'assembly' does not, for that reason alone, justify State regulation. Assemblies must only be regulated to the extent that there is a pressing social need to do so within the permissible limits established in Article 11(2) of the ECHR and Article 21 of the ICCPR. The provisions of a law such as

21 See <https://legislationline.org/sites/default/files/documents/dd/93_MDA_FOA_2007.pdf>.

22 See for the most recent notification to the Council of Europe: <0900001680acb515 (coe.int)>

23 FoPA Guidelines, para. 21. However, the measures taken by the authorities and interfering with the right to freedom of assembly should always have a legal basis under domestic law and the law should be accessible to the persons concerned and formulated with sufficient precision (see ECtHR, *Vyrentsov v. Ukraine*, no. 20372/11, 11 April 2013, para. 52).

the present one can serve as a guide for sound decision-making by the relevant state authorities by establishing clear standards that limit opportunities for arbitrary decisions. Therefore, in any process of reviewing/amending the current legislation or of drafting new legislation, it should be ensured that laws and their implementing legislation effectively aim at facilitating and ensuring the protection of the right to freedom of assembly, rather than to inhibit the enjoyment of this right.²⁴

3.1. Definitions of Assemblies and Key Principles

19. Article 3 defines an assembly as “a temporary and intentional presence of a number of individuals, gathered together to express certain ideas or attitudes.” Whilst this accords in general terms with the definition of an assembly under international law,²⁵ and is largely in line with the FoPA Guidelines,²⁶ the legal drafters could **consider amending the definition to clarify that an assembly means a gathering of individuals in a publicly accessible place to express a common purpose.**²⁷ This would help to distinguish between participants and mere bystanders by emphasizing the elements of intent and common purpose.
20. An assembly is defined as a “temporary” gathering. However, it is important to emphasize that the right to freedom of peaceful assembly also protects long-term demonstrations, including extended sit-ins and “occupy”-style manifestations.²⁸ Generally, assembly organizers have the right to determine the duration of an assembly so that they have sufficient time and opportunity to interact with one another and to manifest their views.²⁹ In relation to the duration of assemblies, restrictions must be based on an assessment of the individual circumstances of each case and participants ought to be given sufficient opportunity to manifest their views or to pursue their other purposes effectively.³⁰
21. The definition of spontaneous assembly as a “direct and immediate response to events in society” as currently drafted in Article 3 is unduly narrow. **It is recommended that the definition not be solely limited to assemblies in response to “social events” but should include all spontaneous gatherings in response to current events of a public importance, interest or concern, be they political, economic, social, cultural or environmental.**³¹
22. The definition of assemblies does not include any reference to counter-demonstrations. Individuals have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at a public assembly. Counter-demonstrations shall be facilitated so that they occur within ‘sight and sound’ of their target unless this physically interferes with the other assembly and gives rise to imminent violence that cannot be mitigated or prevented. Although counter-demonstrations seem to be covered under ‘spontaneous assemblies’, the definition could be clarified to explicitly include reference to counter-demonstrations opposed to the ideas or claims that an assembly is

24 ODIHR and Venice Commission, *Joint Opinion OSCE/ODIHR and Venice Commission on the Legal Framework Governing the Freedom of Peaceful Assembly in Bosnia And Herzegovina, in its Two Entities and in Brčko District (2019)*, para. 30.

25 UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para.4; *ECtHR Caselaw Guide on Article 11 of the ECHR*, para.14.

26 FoPA Guidelines, para.18.

27 *ECtHR Caselaw Guide on Article 11 of the ECHR*, para.14.

28 UN Human Rights Council, *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*, A/HRC/31/66, 4 February 2016 (UN SR Joint Report 2016), para.10.

29 FoPA Guidelines, para.60.

30 FoPA Guidelines, para. 146. See also ECtHR, *Éva Molnár v. Hungary*, no. 10346/05, 2008, para. 43.

31 UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para.14.

seeking to promote and which are also protected by the right to freedom of peaceful assembly.³²

23. Article 4 of the 2008 Law provides four principles that shall apply when implementing the Law, i.e., proportionality, non-discrimination, legality and presumption in favour of organizing an assembly. It is welcome that the Law provides that the enjoyment of the right to peacefully assemble is guaranteed to everyone. At the same time, the non-discrimination grounds that are provided, namely “*race, nationality, ethnic origin, language, religion, gender, opinion, political affiliation, wealth, social origin or any other criteria*” could be further expanded in line with the grounds provided in the UN HRC General Comment No. 37 and in the FoPA Guidelines, which also refer to other common grounds including colour, age, property, belief, birth, genetic features, health conditions, minority, indigenous or other status, immigration or residency status, disability, sex, sexual orientation or gender identity.³³
24. The inclusion of the principle of presumption in favour of organizing an assembly is welcome, although it is defined in a convoluted manner and would benefit from revision. The essence of such a principle is that the freedom of peaceful assembly, should, in so far as possible be enjoyed without any undue limitations, and that anything that is not explicitly forbidden should be presumed to be permissible and that those wishing to exercise this freedom should not be required to get permission.³⁴ Moreover, the peaceful intentions of the organizers of an assembly should be presumed unless there is compelling and demonstrable evidence that those organizing a particular gathering themselves intend to use, advocate or incite imminent violence. The presumption in favour of (peaceful) assemblies includes an obligation of tolerance and restraint towards peaceful assemblies in situations where legal or administrative procedures and formalities have not been followed.³⁵ The way the presumption is currently phrased in Article 4 implies that the principle is restricted to assemblies for which prior requests have been submitted, which would exclude from its scope spontaneous, unplanned and non-notified assemblies, which should be facilitated and protected in the same way as assemblies that are planned in advance.³⁶ **The scope of the principle of presumption in favour of organizing an assembly should be expanded to reflect these aspects, and also make clear the presumption of the lawfulness of assemblies. In addition, the order of principles may be changed so that the presumption in favour of assemblies comes first.**

3.2. Scope of the Law

25. Article 2 (1) of the 2008 Law provides that the Law “regulates the procedure of organizing and holding assemblies held outside the buildings”. The wording of this provision is not fully consistent with the content of Article 5 of the 2008 Law, which provides that “*assemblies may be held in any place open to the public, outside the buildings or other sites closed to free access*” (see Sub-Section 4.4 below). As noted in UN HRC General Comment no. 37, “*...peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access [...]*” and “*...rules concerning public access to some spaces, such as buildings and parks, may also limit the right to assemble in such places, the application of such restrictions to peaceful assemblies must be justifiable in terms of article 21 [ICCPR].*”³⁷ Similarly, the FoPA

32 FoPA Guidelines, para.22.

33 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 25; and FoPA Guidelines, para. 24.

34 FoPA Guidelines, para.76.

35 FoPA Guidelines, para. 20.

36 FoPA Guidelines, para. 22.

37 UN Human Rights Committee, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), CCPR/C/GC/37, 17 September 2020, para. 55.

Guidelines refer to “publicly accessible spaces” and specify that where buildings and structures are capable of accommodating the anticipated number of participants and are ordinarily open to the public, they may also be regarded as legitimate locations for assemblies.³⁸ Unless an issue of translation, **Article 2 should reflect that the object of the law should be to regulate the procedure for organizing and holding assemblies in publicly accessible spaces,**³⁹ as done in Article 5.

26. Article 2 (2) excludes from the scope of the Law, sport, cultural and artistic events and other entertainment activities, commercial events, but also “*religious assemblies, in the form of public worship or other traditional manifestations*”. Article 24 (2) of the 2008 Law provides that the actions envisaged in Article 2 (2) will be regulated by special normative acts.
27. It is justified to exclude from the scope of the Law gatherings for entertainment, sport or artistic purpose or for-profit events, which is also in line with the FoPA Guidelines.⁴⁰ However, the differential treatment of all types of cultural or religious assemblies from other assemblies to ‘*express certain ideas or attitudes*’ as defined in Article 3 may raise questions. Given the importance of freedom of peaceful assembly in a democratic society, assemblies should be regarded as an equally legitimate use of public space as other, more routine uses of such space, such as pedestrian and vehicular movement or economic activity,⁴¹ but also cultural and religious or belief assemblies, which should therefore not have priority over other assemblies. The said provision may provide the possibility to potentially treat differently assemblies, depending on the “message” being conveyed. As underlined in the FoPA Guidelines, any difference in treatment is only permissible where the individuals concerned are in significantly different situations or where the differentiation is justified by a compelling public interest.⁴² Moreover, authorities would have to decide what category the content of the message of the assembly falls into in order to facilitate it. In practice, some assemblies may be a mixture of various categories and would make it difficult to decide how each should be categorized and by whom. This may potentially lead to a discriminatory application of the Law by the public authorities in charge of its interpretation and implementation. The legal drafters should **reconsider the exclusion of religious and cultural assemblies from the scope of the Law.**
28. Developments of new technologies impact the way in which assemblies are conducted, creating both new opportunities and challenges for the effective enjoyment of the right to freedom of peaceful assembly and other human rights. Internet-based technologies play an increasing role in the exercise of the right to freedom of peaceful assembly, as the Internet and social media can be used to discuss, plan and publicize offline assemblies.⁴³ Additionally, online platforms are used for online activism and gatherings

38 FoPA Guidelines, para. 61.

39 FoPA Guidelines, para. 12.

40 FoPA Guidelines, para. 14.

41 See UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 7; ECtHR, *Patyi and Others v. Hungary*, no. 5529/05, 7 October 2008; ECtHR rejected the Hungarian government’s arguments regarding potential disruption to traffic and public transport; *Körtvélyessy v. Hungary*, no. 7871/10, 5 April 2016, para. 29: the ECtHR concluded “*the authorities, when issuing the prohibition on the demonstration and relying on traffic considerations alone, failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those others whose freedom of movement may have been frustrated temporarily, if at all.*”

42 FoPA Guidelines, para. 14.

43 As underlined in the FoPA Guidelines, legislation and state policies should ensure that the Internet can be used to prepare and organize assemblies and especially that social media can be used as a medium to mobilize and organize assemblies that later take place offline, see FoPA Guidelines, para. 68.

of people.⁴⁴ Thus, online activism, including when related to assemblies or the exercise of other fundamental rights, warrants protection⁴⁵ and careful consideration.

29. The duty of public authorities to respect, protect and facilitate peaceful assemblies applies regardless of location and form of the assembly,⁴⁶ while legislation and state policies should ensure that the Internet and social media can be used to facilitate assemblies, including to prepare, mobilize and organize assemblies.⁴⁷ Restrictions on exercising the right to freedom of peaceful assembly, regardless of location and form,⁴⁸ should meet the strict requirements of legality, legitimacy – pursuing a legitimate aim as exhaustively enumerated in international instruments, necessity and proportionality, and non-discrimination. **Should the public authorities choose to regulate the use of modern technologies in the context of exercising the right to peaceful assembly and/or online gatherings of people, ODIHR stands ready to assess the compliance of the proposed provisions with international human rights standards and OSCE commitments.** In any case, while the use of modern technologies may be crucial for the effective exercise of the right, it is fundamental to bear in mind that online gatherings should never be treated by authorities as adequate alternative to in-person assemblies.

4. RESTRICTIONS PRIOR TO AN ASSEMBLY

4.1. Restrictions on Who May Organize Assemblies

30. Article 6 (2) provides that “[m]inors who have reached the age of 14, as well as persons in respect of whom a judicial measure of protection has been established, may organize assemblies only together with a person vested with full legal capacity”. This means that the 2008 Law precludes children and young persons below the age of 14 from organizing any assembly. Those from 14 until 18 years old may do so but only together with a person who has legal capacity. The latter requirement also applies to any person “declared incapacitated”.
31. Under international law, all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. States are required to ensure that laws, and their interpretation and application, do not result in discrimination – i.e., a differential treatment that is unjustified or disproportionate, in the enjoyment of the right of peaceful assembly, including on the basis of age and disability.⁴⁹
32. Article 15 of the UN Convention on the Rights of the Child provides that “*States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly*” and that “*No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*” As underlined in the FoPA Guidelines, relevant legislation should reflect the

44 See e.g., FoPA Guidelines, paras. 20 and 45. See also UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 6: “Article 21 of the ICCPR protects peaceful assemblies wherever they take place – outdoors, indoors and online; in public and private spaces; or a combination of all of these”.

45 See e.g., FoPA Guidelines, para. 45: “Access to the Internet and social media has become an important aspect of an assembly for organizers, participants, monitors and human rights defenders. This is clearly an area where the rights to freedom of expression and freedom of peaceful assembly intersect, and some forms of online interaction may serve functions that are equivalent to those of physical assemblies”.

46 See e.g., UN HRC, General comment No. 37 (2020) on the right of peaceful assembly (Article 21), para. 6; FoPA Guidelines, paras. 10, 61 and 68.

47 FoPA Guidelines, para. 68.

48 See e.g., UN HRC, General comment No. 37 (2020) on the right of peaceful assembly (Article 21), para. 6; FoPA Guidelines, paras. 10, 61 and 68.

49 UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para.25; FoPA Guidelines, paras.24 and 101-102.

state's duty to facilitate the exercise of the right to freedom of peaceful assembly for children.⁵⁰ While certain restrictions may be placed on the exercise of the right to assemble by children, in view of the responsibilities of organizers or due to relevant safety concerns, any such restrictions must follow the requirements set out in international human rights instruments and full account needs to be taken of the best interests of the individual child and of his/her evolving capacity.⁵¹ **The legislator should therefore reconsider the limit of 14 years old below which children and young persons cannot organize assemblies at all.** In addition, the right to freedom of assembly also includes the right to choose *not* to participate in assemblies. It is particularly important in this regard that children are protected from coerced participation in assemblies.⁵²

4.2. Grounds for Prohibiting Assemblies

33. Article 8 defines the grounds based on which assemblies may be prohibited.⁵³ and based on which local public administration authorities may file a lawsuit, requesting the prohibition of the respective assembly (Article 14 (4), see also Sub-Section 4.5 below).
34. The prohibition of a specific assembly should be considered only as a measure of last resort. Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least intrusive measures.⁵⁴ A ban on assemblies can only be justified if there is a real danger of their resulting in disorder or imminent violence which cannot be prevented by other less stringent measures.⁵⁵ It must however be taken into account that sometimes a real danger may exist, even if that is not the purpose of the assembly, as referred to in the first sentence of Article 8. **It is important therefore that Article 8 is not applied to disproportionately restrict assemblies based on their content of the message(s) that they seek to communicate**, within the limits set by Article 10 (2) of the ECHR and Article 19 (3) of the ICCPR.⁵⁶

50 FoPA Guidelines, para. 107.

51 FoPA Guidelines, para. 73.

52 FoPA Guidelines, para. 107.

53 i.e., where assemblies have the *purpose* of a) Instigation to aggression war, national, racial, ethnic or religious hatred; b) Instigation to public discrimination or violence; c) Undermining the national security or the territorial integrity of the state, perpetration of crimes, violation of public order or organization of mass riots, violation of public morality, violation of rights and freedoms of other persons or endangering their lives or health.

54 UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 37.

55 See ECtHR, *Christians against fascism and racism v. United Kingdom*, no. 8440/78, 16 July 1980.

56 In this respect, it should be underlined that international human rights law recognizes a very limited number and narrowly defined types of expression which States must prohibit or render punishable (by law). These include: “*direct and public incitement to commit genocide*”, which should be punishable as per Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide to which the Republic of Moldova acceded on 26 January 1993; the “*propaganda for war*” and the “*advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*”, which should be prohibited as per Article 20 (1) and (2) of the ICCPR; “*all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as [...] incitement to [acts of violence] against any race or group of persons of another colour or ethnic origin*”, which should be an offence punishable by law according to Article 4 (a) of the ICERD; “*public provocation to commit acts of terrorism*”, when committed unlawfully and intentionally which should be criminalized (see UN Security Council [Resolution 1624 \(2005\)](#)). Regarding the prohibition of incitement to discrimination, hostility or violence (Article 20 of the ICCPR and Article 4 of the ICERD), it is also subject to the strict conditions of Article 19 of the ICCPR, see UN Human Rights Committee (CCPR), [General Comment no. 34 on Article 19: Freedoms of opinion and expression](#), 12 September 2011, para. 11 and CERD, [General recommendation No. 35 \(2013\)](#), paras. 19-20. Such forms of expression would only be prohibited and punishable by law when: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence; taking into account a number of factors to determine whether the expression is serious enough to warrant restrictive legal measures including the context, speaker (including the individual's or organization's standing), intent, content or form, extent of the speech, and likelihood of harm occurring (including imminence); see CERD, [General recommendation No. 35 \(2013\)](#), paras. 13-16; see also the [Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#), in the Report of the United Nations High Commissioner for Human Rights on the prohibition of incitement to national, racial or religious hatred, United Nations General Assembly, 11 January 2013, Appendix, para. 29. The [General Policy Recommendation No. 7](#) of the European Commission against Racism and Intolerance (ECRI) recommends to make it a criminal offence to publicly incite to violence, hatred or discrimination, or to threaten an individual or group of persons, for reasons of “race”, colour, language, religion, nationality or national or ethnic origin where those acts are deliberate. See also Council of Europe Committee of Ministers, [Recommendation CM/Rec\(2022\)16 on combating hate speech](#), adopted by the Committee of Ministers on 20 May 2022, para. 11.

35. Article 8 (a) and (b) reflect international legal standards that prohibit the propaganda of war and incitement to discrimination, hostility or violence.⁵⁷ It must be reiterated however that all assemblies shall be presumed to be peaceful unless there is compelling and demonstrable evidence that the organizers and/or a significant number of participants intend themselves to use, advocate or incite imminent violence.⁵⁸ The spectrum of conduct that either constitutes ‘violence’, or is regarded as capable of causing ‘violence’, should be narrowly construed, limited in principle to using, or overtly inciting others to use, physical force that inflicts or is intended to inflict injury or serious property damage where such injury or damage is likely to occur.⁵⁹ Thus, to determine whether the grounds listed in Article 8 (a) and (b) may give reason to prohibit an assembly in a specific case, the authorities should prove the violent intentions of the organizers of an assembly and should also demonstrate that a less restrictive response was not possible.⁶⁰
36. The grounds for restrictions in paragraph (c) go beyond those that are foreseen in Article 21 of the ICCPR and Article 11 (2) of the ECHR, and prohibit assemblies that have ‘the purpose of’ undermining the territorial integrity of the state, perpetration of crimes and organization of mass riots. As underlined in the FoPA Guidelines, the grounds listed in relevant international and regional instruments should not be supplemented by additional grounds in domestic legislation and should be narrowly interpreted by the authorities.⁶¹
37. Under international law, the term ‘peaceful’ includes conduct that may annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote. The peaceful intentions of organizers and participants in an assembly must be presumed, unless there is convincing evidence that they themselves intend to use or incite imminent violence, and the burden of proving violent intentions lies with the authorities.⁶² UN HRC General Comment No. 37 points out that the interests of national security “...may serve as a ground for restrictions if such restrictions are necessary to preserve the State’s capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force.”⁶³
38. The right to freedom of peaceful assembly extends to assemblies advocating for changes to a country’s territorial boundaries⁶⁴ or to fundamental constitutional provisions so long as this is done in a non-violent manner. Where assemblies concern vocalizing ‘separatist’ ideas or expressions concerning territory, it must be noted that “*the fact that a group of persons calls for autonomy or even requests secession of part of the country’s territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country’s territorial integrity and national security. [...] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means*”.⁶⁵

57 See Article 20 of the ICCPR and UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para.50: In accordance with Article 20 of the ICCPR, peaceful assemblies may not be used for propaganda for war (Article 20 (1)), or for advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Article 20 (2)). As far as possible, action should be taken in such cases against the individual perpetrators, rather than against the assembly as a whole.

58 FoPA Guidelines, para. 46.

59 FoPA Guidelines, para. 51.

60 FoPA Guidelines, paras. 49 and 132.

61 FoPA Guidelines, para. 28. See also UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 41, which emphasizes that the list of legitimate grounds in Article 21 of the ICCPR is an exhaustive list.

62 ECtHR, [Christian Democratic People’s Party v. Moldova \(no. 2\)](#), no. 25196/04, 2 February 2010, para. 23; FoPA Guidelines, para. 46.

63 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 42.

64 FoPA Guidelines, para.47.

65 See ECtHR, [Stankov and the United Macedonian Organisation Ilinden](#), nos. 29221/95 and 29225/95, para. 97.

39. Article 8 (c) of the Law also refers to the “violation of public morality”. While the ground for restrictions in international instruments include protection of public ‘morals’, this ground should rarely, if ever, be regarded as an appropriate basis for imposing restrictions on freedom of peaceful assembly.⁶⁶ If used at all, this ground should not aim to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition, and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination.⁶⁷ Restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity.⁶⁸
40. **In light of the above, it is recommended that Article 8 (c) be significantly amended in order to narrow its scope.**

4.3. Notification

41. A prior notice requirement is a *de facto* interference with the right to freedom of peaceful assembly, and any such requirement should therefore be prescribed by law, necessary and proportionate.⁶⁹ It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly, but prior notice can enable the state to better ensure the peaceful nature of an assembly and to put in place arrangements to facilitate the event, or to protect public order, public safety and the rights and freedoms of others.⁷⁰ Article 10 of the Law sets out the notification procedure for holding an assembly and defines the duties of local public administration authorities. A person intending to hold an assembly is required to notify the local public administration authority in writing of the name and contact details of the organizer, purpose of the assembly, date and time of the assembly, its duration, route (if a procession), estimated number of participants and the services requested from the local public administration authorities.
42. While most assemblies have one or more individuals organizing the event, an identifiable organizer is not always part of the planning of an assembly. The increased use of social media allows assemblies to be organized in a more informal manner but the absence of an identifiable organizer does not diminish the protection afforded by the right to freedom of assembly to all expressive gatherings. In accordance with the FoPA Guidelines, assemblies should be facilitated by public authorities whether they have a formal or named organizer or not.⁷¹ **Article 10 should be amended to recognize that not all assemblies may have identifiable organizers.**
43. The requirement that the authorities issue the organizer with a proof of the receipt of notification, and take necessary measures to provide the services requested by the organiser, is very welcome. This reflects the positive duty to facilitate peaceful assemblies under international law.
44. Under Article 12, spontaneous assemblies do not have to comply with certain elements of the notification procedure set out in Article 10, specifically, the requirement to provide notice in writing at least 5 days before the date of the assembly. Instead, organizers of spontaneous assemblies are required to notify the date, hour, place and purpose of the assembly; the names of the organisers; and the services requested from the local authorities as soon as the intention to hold the assembly is known. While notification,

66 FoPA Guidelines, para. 142.

67 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 46.

68 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 46.

69 FoPA Guidelines, para. 25.

70 FoPA Guidelines, para. 25.

71 FoPA Guidelines, para. 170.

when possible, would allow authorities to better facilitate assemblies, spontaneous assemblies should, by their very nature, be exempted from any notification requirements. Notifications requirements for spontaneous assemblies may be impossible and impractical to comply with and thus should not automatically lead to defining such assemblies as illegal. **Laws regulating freedom of assembly should therefore explicitly exempt such assemblies from prior notification requirements.**⁷²

45. It is noted that Article 12 (4) gives local public administration authorities the power to challenge the holding of spontaneous assemblies in court but does not include on what grounds they may do so. This creates uncertainty in the Law. **It is recommended that Article 12 (4) be revised to set out the grounds that may be invoked by a local authority to challenge the holding of a spontaneous assembly in court.**

RECOMMENDATION A.1.

To amend Article 10 to recognize that not all assemblies may have identifiable organizers.

RECOMMENDATION A.2.

To explicitly exempt spontaneous assemblies from prior notification requirements.

RECOMMENDATION A.3.

To revise Article 12 (4) to specify the grounds that may be invoked by a local authority to challenge the holding of a spontaneous assembly in court.

4.4. Location

46. Article 5 of the Law provides that assemblies may be held in any place open to the public, outside buildings or other sites closed to free access, and they may be held in a single place or participants may move. As recommended above with respect to Article 2, Article 5 (1) should also reflect that assemblies may be held in any publicly accessible spaces.
47. Article 5 (3) gives local public administration authorities a wide discretion to declare public spaces or sites temporarily closed to the public where they receive a request for the purposes of holding official events or undertaking repair works. This provision has the potential to be exercised arbitrarily and creates uncertainty as to the accessibility of public spaces. The spectrum of ‘official events’ is unclear. It may entail a great variety of events organized by authorities, which in practice could be applied as a pretext for restrictions and would allow for such events taking legal precedence over assemblies.
48. **It is recommended that the provision be amended to require local public administration authorities to publicize any public spaces temporarily closed and ensure that any request to declare a public site temporarily closed is considered in light of the presumption in favour of facilitating peaceful assemblies and to avoid any such request acting as a fetter or indirect restriction on the right to freedom of peaceful assembly.** Also, Article 5 may be amended to require a balancing test between each notified or spontaneous assembly and a planned *official event*.

72 FoPA Guidelines, para. 25.

4.5. Procedure for Modification to Holding of Assemblies and Prohibiting Assemblies

49. Article 14 sets out the circumstances when public authorities may seek to modify or impose conditions on the holding of an assembly. Measures taken before, during and after an assembly (e.g., administrative or criminal sanctions) all constitute restrictions of assemblies. Article 14 (3) provides that where a local public administration authority considers it necessary to ensure the holding of a peaceful assembly, it may recommend that the organizers change the conditions of holding the assembly in terms of time, place or form of the assembly. However, the provision states that the organizer “shall take the final decision” regarding any change made to the assembly.
50. International law recognises that the timing, duration or frequency of a demonstration may play a central role in achieving its objective.⁷³ The imposition of any changes to, or restrictions on, an assembly should be guided by the objective of facilitating the right to peaceful assembly, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.⁷⁴
51. Article 14 (3) does not explain how this process will work in practice or the consequence if an organizer decides not to follow the local authority’s recommendation or where an organizer is unknown. **It is recommended that this provision be supplemented in this respect.**
52. Article 14 (4) provides that if local public administration authorities hold convincing evidence that an assembly will be organised in violation of the provisions of Article 8 (prohibition of assemblies with particular purposes), they may challenge the legality of the assembly in court and request the prohibition or modification of the assembly, with the initiation of the lawsuit not suspending the right to hold the assembly. Article 15 further states that any party is entitled to challenge the court decision, in maximum 3 days since the pronouncement. The prohibition of a specific assembly can be considered only as a measure of last resort. Where the imposition of restrictions on an assembly is deemed necessary, the authorities must apply the least intrusive measures necessary.⁷⁵
53. Placing the burden of proof on local authorities to demonstrate that an assembly violated specific provisions of the Law and expressly providing that the initiation of court proceedings does not suspend the right to holding the assembly, in addition to the swift procedure for appeal, are welcome safeguards which reinforce the presumption in favour of facilitating assemblies. **It is important that such safeguards apply to all assemblies, including spontaneous and simultaneous assemblies.** To ensure that the appeal of a court decision prohibiting an assembly can be resolved before the assembly is planned to take place, courts or tribunals should also have the authority to issue interim orders or rulings pending final resolution of the case and the Law could be supplemented in this respect.⁷⁶

73 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para.54.

74 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para.36.

75 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para.37.

76 FoPA Guidelines, para. 126.

5. OBLIGATIONS OF ORGANIZERS AND PARTICIPANTS OF ASSEMBLIES AND LAW ENFORCEMENT

54. Article 16 (1) provides that assemblies must be held in a peaceful manner. International law only protects the right to ‘peaceful assembly’, which does not cover demonstrations or gatherings where the organizers and participants have violent intentions. However, the burden of proving violent intentions on the part of the assembly organizers lies with the authorities.⁷⁷
55. It is important to note that an assembly where isolated acts of violence occur is not automatically considered non-peaceful so as to forfeit the protection of the right to freedom of assembly. Similarly, an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the assembly if the individual in question remains peaceful in his or her own intentions or behaviour.⁷⁸
56. Article 16 (3) forbids the holding of weapons, explosives or “any other forbidden substances or other objects that can endanger people’s health or life.” This provision as drafted appears to apply to everyone, whether an assembly participant or a member of the public who happens to be in the vicinity of the assembly. The reference to “objects that can endanger people’s health” is broad and potentially subject to diverging interpretation. The provision has the potential to result in unjustified interference, excessive and arbitrary searches of individuals or assembly participants and seizures of personal property. There should be a distinction between items that are generally recognized as weapons and objects not normally considered to be weapons, but which may in some contexts be used as such, and which should be permitted during an assembly, unless there are clear indications that they will be used for acts of violence.⁷⁹
57. Participants in assemblies and the wider public should not be subjected to unreasonable searches and seizures. Law enforcement policies/protocols should provide guidance on the legal and appropriate use of stop and search. It is recommended that Article 16 include an express statement that any searches conducted under Article 16 (3) will only be justified if there is probable cause or reasonable suspicion of a crime, they are necessary and proportionate, and respects human dignity⁸⁰ or, alternatively, Article 16 should refer to relevant legislation prescribing the legalities of stop and search by law enforcement authorities in line with such requirements.
58. Article 16 (2) provides that the organizer must ensure access to the nearby buildings of an assembly. This appears to impose an undue obligation on the organizer since depending on the circumstances, the organizer may not necessarily be able to do so. While organizers and stewards may provide assistance, states retain primary responsibility for the protection of public safety and security, have a positive obligation to provide adequately resourced policing arrangements and intervene when necessary.⁸¹ Also, the peaceful assembly includes conduct that temporarily hinders, impedes or obstructs the activities of third parties.

77 ECtHR, *Christian Democratic People’s Party v. Moldova (no. 2)*, no. 25196/04, 2 February 2010.

78 ECtHR, *Ezelin v. France*, 1991; *Frumkin v. Russia*, 2016.

79 FoPA Guidelines, para. 154.

80 FoPA Guidelines, para. 219. The ECtHR analyzes whether (i) search measures are necessary and proportional to the legitimate aim, (ii) there is an effective oversight mechanism in place, (iii) the authorization to conduct such searches is subject to effective judicial review and action for damages, (iv) there are temporal and geographical restrictions to the said powers of search, (v) the modalities for carrying out stop and search measures are clearly stated, and (vi) there are any caveats to the decision to stop and search individuals (for instance, the necessity to demonstrate reasonable suspicion). See, for example, ECtHR, *Gillan and Quinton v. United Kingdom*, no. 4158/05, 10 January 2010.

81 FoPA Guidelines, para. 138.

59. In this respect it is also observed that Article 18 (2) states that organizers “may set his own apparatus to ensure order during the meeting, whose members shall bear distinctive signs in order to be easily identified.” Whilst the translation is not particularly clear, this should not be interpreted as requiring the assembly organizer or assembly stewards or marshals, to maintain public order, which should remain the responsibility of state authorities.
60. Article 21 (1) provides that participants who “*violate public order or the provisions of article 8*”, shall be removed by the organizer, acting alone or together with law enforcement officials.⁸² The provision lacks clarity. It is not clear how, or under what powers, an organizer would be able to physically remove an assembly participant. Further, if a vague or expansive definition of ‘public order’ is used by law enforcement officials, there is a potential for overbroad restrictions on the right of peaceful assembly. “Public order” is defined in international law as the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights, including the right of peaceful assembly.⁸³ As underlined in the FoPA Guidelines, the term ‘public order/ordre public’ is rather vague and has been interpreted in a variety of ways, but is generally understood to be wider than that of “prevention of disorder or crime”; however, there is broad consensus that a hypothetical risk of public disorder, or the presence of a hostile audience are not, by themselves, legitimate grounds for prohibiting a peaceful assembly.⁸⁴ Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration. The mere fact that the content or manner in which an assembly is conducted may annoy, offend, shock or disturb others, or that such assembly may cause some temporary disruptions of daily life, or affect the aesthetic appearance of a public space, does not by itself amount to a disruption of public order.⁸⁵ It is important that law enforcement officials do not treat “public order” and “law and order” as synonymous.⁸⁶ **It is recommended that this provision be clarified to ensure the organizer’s role does not overlap that of authorities and that guidance is provided on the definition of public order.**
61. It is welcome that Article 21 (2) explicitly provides that assembly organizers will only be requested to “immediately cease the assembly” in exceptional circumstances when other less restrictive measures are insufficient to ensure the legal holding of the assembly. This should always be a measure of last resort.
62. Article 19 sets out the duties of participants of assemblies. Article 19(b) requires participants to “*abstain from actions that would impede holding of the assembly and from instigation of such actions*”. The provision lacks clarity and confers a wide discretion on authorities charged with its enforcement. It is recommended that the provision be amended. It should be sufficiently precise and clear so that assembly participants know how to regulate their conduct to comply with the provision.
63. Finally, Article 20, which deals with the rights and obligations of local public administration authorities, could include an obligation to ensure as much as practicable

82 Police or carabinieri. The General Inspectorate of Police is the national police force. It is the primary law enforcement body, responsible for internal security, public order, traffic, border security and criminal investigations. The General Inspectorate of Carabinieri is a specialised state authority with military status. It forms part of the national system of defence and public security, with duties of maintaining and restoring public order, preventing and detecting crimes, combatting terrorism and protecting the state in times of emergency, siege or war. It exercises police duties in peacetime and military duties in times of siege or war.

83 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 44, citing the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, para. 22

84 FoPA Guidelines, para. 139.

85 FoPA Guidelines, para. 139.

86 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para.44.

that counter-demonstrations or simultaneous assemblies with competing views can take place and are facilitated.

5.1. Liability for Violating the Law

64. Article 23 states that assembly participants may be subject to civil, administrative or criminal sanctions in the event that they fail to comply with the 2008 Law. Organizers may be subject to an administrative sanction for holding an un-notified assembly or for holding an assembly that does not comply with the terms of the notification.⁸⁷ In addition, organizers will be held responsible for acts of participants which they incite or instigate.⁸⁸
65. Organizers and participants are expected to comply with the legal requirements made of an assembly, and they may be held accountable for their own unlawful conduct, including the incitement of others.⁸⁹ Individual liability arises if any participant intentionally, or with criminal negligence, commits an offence during an assembly or intentionally fails to follow the lawful directions of law enforcement officials.
66. Under international law, individuals may not be punished based on a law that was insufficiently clear, which would violate the principle of legality, foreseeability and specificity of criminal legislation.⁹⁰ As such, the imposition of sanctions and penalties after an assembly is only permissible if such sanctions were prescribed by law and the prohibited conduct was sufficiently certain and foreseeable *at the time* the assembly took place.⁹¹
67. Where organizers do not fully comply with the notification procedure and content requirement or with conditions imposed on assemblies during the notification process, this shall only be punished if there is evidence to prove that they have done so intentionally, and where the non-compliance is substantial. The burden of proof in such cases, however, rests with the public authorities. In any case, the authorities must show that the envisaged sanctions are necessary in a democratic society and are proportionate to the interests being pursued,⁹² meaning that penalties for minor offences that do not threaten to cause or result in significant harm to public order or to the rights and freedoms of others – such as the failure to provide advance notice, should be low and the same as minor offences unrelated to assemblies. Thus, it would be inappropriate to punish an assembly organizer if the expected and notified number of participants unexpectedly rises above the threshold for notification. Moreover, if there are reasonable grounds for non-compliance with a notification or permit requirement, such as in the case of spontaneous assemblies, then no liability arises, and no sanctions should be imposed. **Article 23 should be revised to ensure that these exceptions to liability are reflected. The legislator should also ensure that sanctions and penalties are strictly necessary and proportionate.**

6. FORCED DISPERSAL

68. Article 22 provides that an assembly may be dispersed on the grounds that “*the organiser of the assembly does not comply with the request of the local public administration authority or is not able to cease the assembly*”; or “*if the participants in an assembly do*

87 Article 23(2).

88 Article 23(3).

89 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para.65.

90 FoPA Guidelines, para. 221.

91 FoPA Guidelines, para. 221.

92 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 71.

not leave the place of the assembly at the request of the local public administration authority, police and/or carabinieri...”. Article 22 provides that in the event that assembly participants do not disperse following a request by the local public administration authority, law enforcement authorities will give a warning to participants that the assembly may be forcefully dispersed. The warning must be repeated twice and give participants reasonable time to disperse. If participants do not disperse, at the request of the local public administration authority, law enforcement authorities will act to disperse the assembly. In the event that an assembly is dispersed forcefully, law enforcement authorities must record in writing the reasons and grounds for the dispersal.

69. Under international law, dispersal of assemblies should be a measure of last resort, and not be permissible unless it is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures, such as targeted arrests⁹³ or prosecutions of demonstrators after the assembly.⁹⁴ Dispersal may, at some point, be deemed necessary in the interests of public order or health, depending on the size, location and circumstances of an assembly.⁹⁵ The European Court of Human Rights has made clear that a decision to disperse an assembly must be justified by relevant and sufficient reasons⁹⁶ and the non-compliance of the assembly with the formal requirements for holding it is not sufficient for its dispersal.⁹⁷ An interference with an assembly involving its disruption, dispersal or the arrest of participants can only be justified on specific and stated substantive grounds, such as serious risks provided for by law,⁹⁸ and only after the participants had been given sufficient opportunity to manifest their views⁹⁹ and to disperse peacefully.¹⁰⁰
70. **It is recommended that Article 22 be amended to state that assemblies will only be dispersed as a measure of last resort and to set out the strict circumstances when the local public administration authority may request (i) an assembly organizer to cease an assembly or (ii) assembly participants to disperse.**
71. Where guidance or standard operation protocols are developed for such scenarios, it is important that they are developed and made public, comprehensive guidelines on the dispersal of assemblies in accordance with international human rights law and principles detailing the circumstances that warrant dispersal, all steps required to be taken before a decision to disperse (including de-escalation measures), the individual or individuals who may issue a dispersal order, and the preference for voluntary dispersal before resorting to any use of force. Law enforcement officials should also be appropriately trained to deal with public gatherings, and on how to adequately prioritize human rights.¹⁰¹ The [UN Code of Conduct for Law Enforcement Officials](#), together with relevant international human rights standards and publications, should form the core of any law enforcement training. Law enforcement officials should be fully aware of and understand their responsibility to facilitate and protect all peaceful assemblies. In particular, officials should be provided with the skills to police assemblies in a manner that avoids escalation

93 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para.85; FoPA Guidelines, para.179.

94 FoPA Guidelines, para. 179.

95 FoPA Guidelines, para. 179.

96 European Court of Human Rights, *Ibrahimov and Others v. Azerbaijan*, 2016; *Laguna Guzman v. Spain*, 2020.

97 ECtHR Article 11 Guide, para. 83.

98 European Court of Human Rights, *Navalnyy v. Russia* [GC], 2008.

99 European Court of Human Rights, *Eva Molnar v. Hungary*, 2008.

100 FoPA Guidelines, para. 179.

101 Training should cover the control and planning of policing operations, with special emphasis on the imperative of minimizing the use of force to the greatest extent possible; techniques of assembly management that minimize the risk of harm to all concerned; the use of various types of equipment available; and the rules governing their use. Such training should also aim to prevent discriminatory treatment and measures by the police, and should raise awareness of the special protection needs of, e.g., women, participants defending women's rights and/or working on gender issues, youth, LGBTI people, persons with disabilities, minorities, or persons from other potentially marginalized or discriminated groups.

of violence and minimizes conflict; including ‘soft skills’ such as negotiation and mediation.

72. The FoPA Guidelines state that in principle, dispersal orders directed at assembly participants should not oblige journalists to leave the area (unless their individual safety is endangered). Journalists are not participants in assemblies, but observers. They should not be prevented from observing and recording the policing operation, unless their continued physical presence will significantly hinder or obstruct law enforcement officers in doing their work.¹⁰² In such cases, media representatives should be given clear instructions and sufficient time to disperse. Other opportunities should then be provided to them to enable them to continue to adequately cover the assembly.¹⁰³ **Consideration should be given to amending the Law to recognize the specific position of journalists and independent monitors, especially in the context of dispersal. These considerations should be extended to independent assembly monitors.**

RECOMMENDATION B.

To amend Article 22 to state that assemblies will only be dispersed as a measure of last resort and to set out the strict circumstances when the local public administration authority may request (i) an assembly organizer to cease an assembly or (ii) assembly participants to disperse.

7. LIABILITY OF LAW ENFORCEMENT AND PUBLIC OFFICIALS

73. Article 22 makes no **explicit reference to the liability of law enforcement or public officials and should be supplemented in this respect.** Law enforcement and other public officials are liable for any failure to fulfil their positive obligations to respect, protect and facilitate the right to freedom of peaceful assembly.
74. Any abuse of powers and violations by law enforcement or other public authorities, including instances of unlawful dispersal or early termination of assemblies, should lead to prompt and independent investigations.¹⁰⁴ Under international law, states have an obligation to investigate effectively, impartially and in a timely manner any allegation or reasonable suspicion of excessive or otherwise unlawful use of force or other violations by law enforcement officials, including sexual or gender-based violence, in the context of assemblies. The expectation that criminal or disciplinary proceedings will be brought against law enforcement officials against whom there is evidence of misconduct is an important protection against impunity and essential for public confidence in the police complaints system. In addition, individuals affected by discriminatory treatment in the context of their exercise of the right to freedom of peaceful assembly, including when notifying the assembly, should be provided with an opportunity to challenge it and should have the right to take legal action to obtain damages and other relief.¹⁰⁵
75. **It is recommended that the Law be strengthened by including a duty to investigate any alleged abuse of power or violations of the Law by law enforcement or other**

102 FoPA Guidelines, para. 180.

103 FoPA Guidelines, para. 202.

104 FoPA Guidelines, para. 234.

105 See e.g., ECtHR, *Danilenkov and Others v. Russia*, no. 67336/01, 30 July 2009, para. 144. See also ECtHR, *Genderdoc-M v. Moldova*, no. 9106/06, 12 June 2012.

public authorities, either by inserting an express provision in the law or through a reference to other relevant legislation.

RECOMMENDATION C.

To include in the Law an explicit reference to the liability of law enforcement or public officials while including a duty to investigate any alleged abuse of power or violations of the Law, by law enforcement or other public authorities, either by inserting an express provision in the Law or through a reference to other relevant legislation.

8. MONITORING AND SURVEILLANCE OF ASSEMBLIES

76. Article 17 (1) provides that “[a]ny person may register the assemblies on audio or video devices”. Participants, journalists and monitors also have the right to record law enforcement officials. Whilst the second paragraph of the provision refers to ensuring access of the press to the assemblies, it is understood that *any person* may make a video or audio recording of an assembly.
77. The provision could also potentially be interpreted to allow for the collection of relevant information and data by authorities. It is acknowledged that this may under certain circumstances assist the facilitation of assemblies and the use of recording devices by law enforcement officials during assemblies, such as body-worn cameras, may play a positive role in securing accountability, if used judiciously. However, care must be taken to ensure it does not result in suppressing rights or creating a chilling effect. Hence, it is recommended **that unedited body camera and CCTV camera footage worn by law enforcement officials during assemblies is received, monitored and maintained by an independent civilian body and made available to members of the public in accordance with international standards on access to information¹⁰⁶ and that its storage, maintenance, processing and deletion is subject to international privacy and personal data protection standards.**
78. The FoPA Guidelines highlight that digital images of organizers and participants in an assembly should not be recorded except where specifically authorized by law and necessary in cases where there is probable cause to believe that the planners, organizers or participants will engage in serious unlawful activity.¹⁰⁷ Intrusive overt or covert surveillance methods should only be applied where there is clear evidence that imminent unlawful activities, such as violence or use of fire arms are planned to take place during an assembly.
79. The mere fact that a particular assembly takes place in public does not mean that participants’ privacy cannot be violated. For example, the use of facial recognition technology and other technologies which can identify individual participants in a crowd, as well as collection and storing of data by the authorities on particular individuals (even if that data is collected in a public space) may violate the right to privacy when deployed without detailed rules and proper regulatory safeguards to ensure compliance with international human rights standards.

106 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Report on advancing accountability and ending impunity for serious human rights violations related to the exercise of the rights to freedom of peaceful assembly and of association](#) (19 May 2023), A/HRC/53/38, para. 82 (n).

107 FoPA Guidelines, para. 172.

80. The [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](#) notes that legislation and policies regulating the collection and processing of information relating to assemblies or their organizers and participants must incorporate legality, necessity and proportionality tests. Given the intrusive nature of such methods, the threshold for these tests should be high. Where they interfere with the exercise of rights, data collection and processing may amount to a violation of the rights to freedom of peaceful assembly and expression.¹⁰⁸
81. Without safeguards against data retention and processing, Article 17 (1) may result in interference with privacy rights, for instance, by not imposing any limits on the collection, processing, retention and storage of audio and video recordings and data for unlimited periods of time. In addition, independent scrutiny and oversight should be exercised over decisions to collect the personal information and data of those engaged in peaceful assemblies and over its sharing or retention to ensure compatibility of such actions with international law.
82. Law enforcement and public authorities should have clear and publicly available guidelines to ensure that their collection, processing and retention of information and data is consistent with international standards on privacy and does not have a chilling effect on participation in assemblies. **It is recommended that Article 17(1) be complemented by express provisions regarding data collection and processing and limitations on data storage and retention, either by inserting provisions in the text of the Law or making cross-references to other relevant legislation.**
83. Increasingly authorities resort to the use of digital technologies to monitor the planning stages of assemblies. This applies to the monitoring of social media to gather information and data about participation of individuals in peaceful assemblies. The collection of information posted in relation to an assembly may happen indiscriminately. This includes accessing and collecting information from both public and private digital spaces.
84. The Report of the United Nations High Commissioner for Human Rights on the impact of new technologies on the right to freedom of assembly observes in this respect that the ‘...*Special Rapporteur on the rights to freedom of peaceful assembly and of association has called for the prohibition of indiscriminate and untargeted surveillance of those exercising their right of peaceful assembly, in both physical and digital spaces. He underscored that surveillance of protesters should only be conducted on a targeted basis, and only when there is reasonable suspicion that they are engaging in or planning to engage in serious criminal offences, based on principles of necessity and proportionality and with judicial supervision. The General Assembly has also recognized that States should refrain from employing unlawful or arbitrary surveillance techniques, which could include forms of hacking.*’¹⁰⁹ As underlined in the FoPA Guidelines, tools such as surveillance of the Internet portals and social media sites used by activists and identification of a person’s whereabouts through location tracking should only be employed where such interference can be justified based on strictly proven and proportional grounds of national security or public order and should be subject to judicial review.¹¹⁰ Any security measures taken by the state, that would involve either surveillance or restriction of Internet access, should be temporary in nature, narrowly defined and meet a clearly set out legitimate purpose, prescribed by law, and not used to target dissent and

108 See the [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](#), A/HRC/31/66, 4 February 2016, para. 52.

109 UN OHCHR, [Report, Impact of new technologies on the promotion and protection of human rights in the context of assemblies, including peaceful protests](#), 24 June 2020, para. 26.

110 FoPA Guidelines, para. 171.

critical speech.¹¹¹ Finally, regarding online data relating to organizers and participants in an assembly, in the absence of a court order, it should be unlawful to compel Internet Service Providers to share with the authorities information exchanged between persons who are taking part in an assembly.¹¹²

85. **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, processed and accessed, must strictly conform to applicable international privacy and personal data protection standards, 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, recognizing that different rules and obligations will be applicable to public and private entities respectively, in particular in terms of forms of redress.

RECOMMENDATION D.1.

To supplement Article 17(1) by express provisions regarding data collection and processing and limitations on data storage and retention, either by inserting provisions in the text of the Law or making cross-references to other relevant legislation.

RECOMMENDATION D.2.

To ensure that 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, strictly conform to applicable international privacy and personal data protection standards, including on the right to privacy, and may never be aimed at intimidating or harassing participants or would-be participants in assemblies.

9. THE EXERCISE OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY DURING A STATE OF EMERGENCY

86. As noted, Moldova has been in a state of emergency since February 2022 and has notified the Council of Europe about derogation from certain provisions of the ECHR in accordance with Article 15 of the ECHR, referring to the possibility of prohibiting the holding of rallies, public demonstrations and other mass actions. In times of war or public emergency threatening the life of the nation, states may take exceptional measures derogating from their obligation to guarantee freedom of peaceful assembly pursuant to Article 4 of the ICCPR and Article 15 of the ECHR, where this is strictly required by the exigencies of the situation. Derogations from international human rights obligations must be exceptional, and strictly limited temporally, geographically and materially.¹¹³ In situations that do not meet the high threshold for derogations, the possibility of imposing

111 FoPA Guidelines, para. 72.

112 FoPA Guidelines, para. 73.

113 FoPA Guidelines, para. 92.

proportionate and content-neutral time, place and manner restrictions on public assemblies specifically tailored to the particular situation at hand should be sufficient.¹¹⁴

87. Even during a state of emergency and if derogations have been notified, there should be a mechanism in place to regularly review and ensure the temporariness, appropriateness and proportionality of the limitations pertaining to assemblies proportionate to the threats, also considering alternative ways to gather and not impose unnecessary bans, and ensuring that restrictive measures regarding the exercise of the right to freedom of peaceful assembly are eased or terminated as soon as the situation so allows.¹¹⁵
88. The Joint Declaration on protecting the right to freedom of peaceful assembly in times of emergencies by the UN Special Rapporteur on the rights of Freedom of Assembly and of Association and ODIHR amongst others provides useful guidance to review and ensure that adopted emergency measures do not result in imposing undue restrictions on the right to freedom of peaceful assembly and the overall civic space.¹¹⁶ It is noted in this respect that the use of unlawful or disproportionate force, including of less lethal force against individuals, that may constitute torture as well as cruel, inhuman and degrading treatment prohibited under Article 7 of the ICCPR and Article 3 of the ECHR is non-derogable.
89. As underlined in the Joint Declaration, even in times of emergency, it remains important to **protect public discourse and fundamental freedoms and provide the necessary guarantees for everyone to publicly express themselves.**

10. RECOMMENDATIONS RELATED TO THE PROCESS OF PREPARING AND ADOPTING AMENDMENTS TO THE LAW

90. It is understood that the General Police Inspectorate of the Republic of Moldova has prepared an assessment of the existing Law in light of the UN HRC General Comment No. 37 on Article 21 of the ICCPR, and is planning to organize public consultations to discuss the reform of the legal framework regulating the exercise of the right to freedom of peaceful assembly, which is welcome in principle, all the more since such consultations intervene at an early stage of the contemplated reform.
91. OSCE participating States have committed to ensure that legislation will be “*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*” (1990 Copenhagen Document, para. 5.8).¹¹⁷ Moreover, key commitments specify that “*[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*” (1991 Moscow Document, para. 18.1).¹¹⁸ The Venice Commission’s Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.¹¹⁹ The FoPA Guidelines underline the importance of ensuring a consultative approach to the drafting of legislation and related regulations pertaining to the right to freedom of peaceful assembly, to ensure that the needs and perspectives of all persons or groups are taken into consideration, including those responsible for or affected by its implementation, as well as other interested individuals

114 FoPA Guidelines, para. 92.

115 See e.g., ODIHR, *OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic* (2020), pp. 50 and 110-111.

116 The United Nations Special Rapporteur on the rights of Freedom of Assembly and of Association, the Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), the Special Rapporteur on Human Rights Defenders and focal point for reprisals in Africa and Chairman of the African Commission on Human and Peoples’ Rights (ACHPR), and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Joint Declaration on protecting the right to freedom of peaceful assembly in times of emergencies* (15 September 2022).

117 Available at <<http://www.osce.org/fr/odihr/elections/14304>>.

118 Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

119 See Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.

and groups (including local human rights organizations).¹²⁰ Such consultations should be an integral part of the legislative drafting process, and need to be open, transparent, meaningful and inclusive. In particular, sufficient and appropriate outreach activities should ensure the involvement of interested parties from various groups (particularly those facing particular challenges in the exercise of their rights to freedom of peaceful assembly) representing different and opposing views (including those that may be critical of the proposals made). The authorities responsible for organizing consultations should respond to proposals made by stakeholders, in particular where these proposals are not incorporated into the relevant draft law or policy (in this case, the authorities should explain why).¹²¹

92. As noted above, making changes to such an important piece of legislation that impacts the exercise of human rights and fundamental freedoms at a time when a state of emergency is in place in the country may present some challenges. In principle, in times of emergency, states should refrain from considering legislation that is not urgent in nature and should not adopt or amend legislation that may impact fundamental freedoms and human rights,¹²² unless the circumstances would allow to apply ordinary legislative processes and in particular ensure inclusive and meaningful public consultations. Otherwise, proceeding with such a reform during such a time may be considered inappropriate if this reduces opportunity for public consultation or for civil society organizations and individuals to meet to discuss the proposals.¹²³
93. In light of the above, **the public authorities are encouraged to ensure that any future amendments to the Law are subjected to inclusive, extensive and effective consultations, including with civil society, offering equal opportunities for women and men, for persons with disabilities, and persons from under-represented and vulnerable or marginalized groups to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the revised Law, once adopted.**¹²⁴

[END OF TEXT]

120 FoPA Guidelines, para. 99.

121 FoPA Guidelines, para. 99.

122 See ODIHR, *Guiding Principles of Democratic Lawmaking and Better Laws* (9 October 2023), Principle 11.

123 See e.g., ODIHR, *The Impact of the COVID-19 Pandemic on the Right to Freedom of Peaceful Assembly* (16 September 2022), Part 7.

124 See e.g., OECD, *International Practices on Ex Post Evaluation* (2010).