NEW TECH USE AND IMPACT ON ASSEMBLIES: UN THEMATIC REPORT

European Center for Not-for-Profit Law

This briefing is a summary of the Thematic Report (A/HRC/44/24) of the United Nations High Commissioner for Human Rights on the **Impact of new technologies on the promotion and protection of human rights in the context of assemblies, including peaceful protests**. The Report was prepared following a request of the **Human Rights Council Resolution 38/11**.

THE CONTEXT

The last years were momentous with mass protests worldwide. Structural and institutional racial discrimination, worsening socioeconomic conditions, corruption, inequality and the denial of other human rights., with the COVID-19 pandemic further exacerbating these issues, all took people on the streets or made them organise and protest online.

WHAT IS IT ABOUT?

The Report:

- Examines new technologies, including information and communication technology ("ICT"), Artificial Intelligence ("AI") and surveillance tools, and their use at assemblies and peaceful protest both online and offline;

- Denounces the negative consequences of State authorities using some of these technologies. This includes the use of surveillance and new, less-lethal weapons -such as tear-gas, drones and pepper balls - to disrupt and disperse peaceful assemblies;

- Formulates recommendations to States as well as and private businesses to avoid unlawful limitations on the right of peaceful assembly and related rights, when new technologies are at play.

NEW TECHNOLOGIES USED TO ENABLE ASSEMBLIES...

ICT and AI technologies have become instrumental to the right to peaceful assembly because they can be used to:

- Organise assemblies, coordinating them and publicizing them to a larger audience (often via social media networks);

- Form networks and coalitions;

- Ensure privacy and safety of communications, e.g. via end-to-end encryption;

- Share information with traditionally marginalised groups and activists;

- Facilitate the management of assemblies by authorities and organisers;

- Increasing transparency and accountability for violations and abuses that may occur during assemblies (e.g., via lawful use of body cameras by security officials, live-streaming through social media, etc.);
- Provide live information on protests taking place in some areas or legal aid to protesters facing arrest.

Assemblies are now increasingly also happening solely online, or even seamlessly online and offline. This opens up the space for people who are unable or unwilling to participate in physical demonstrations: e.g. people with disabilities, or living in remote areas, or at risk of targeted persecution for their race, beliefs and sexual orientation.

> Civil society organizations have documented an increase of internet shutdowns of over **30 per cent** in 2019, with **213** documented cases of shutdowns in **33** countries. Source: Access Now, Keep It On 2019 Report A

...AND TO CRACK DOWN ON THEM:

At the same time, States and private actors use some of these new technologies to restrict the right to peaceful assemblies both in the physical and online space:

- **Interference with access to new technologies and online information**: e.g., blocking of websites, filtering of protest-related content, closure of CSOs' or activists' online accounts and internet shutdowns;
- **Technology-enabled surveillance** of online/offline activism with a chilling effect on people's participation: e.g., audiovisual recordings of assembly participants, biometrics-based facial recognition technology during protests, hacking and infiltration of digital tools used by those seeking to assemble, interception of communications.

What is an "International Mobile Subscriber Identity (IMSI) catcher?

An IMSI catcher is a device that captures the International Mobile Subscriber Identity and the International Mobile Station Equipment Identifier of mobile phones, which are unique to each mobile phone and SIM cards. They are easy to carry and can cover entire cities. Once a mobile phone is connected to such a catcher, it will provide information that can identify the user, including the content of calls, text messages and websites visited. Some governments already use such devices for the surveillance of individuals assembling or associating with others or even to block their communications or send them intimidating messages. For more info, see Privacy International's IMSI Catchers Legal Analysis.

- **Abuse of new "less-lethal" weapons and ammunition technology** to disrupt and disperse assemblies: e.g., taser guns; advanced kinetic impact projectiles, such as attenuating energy projectiles; drones and autonomous systems that employ tear gas and other less-lethal ammunition; pepper balls and pepper-ball launchers; dazzling weapons; acoustic weapons; and malodorants. **Only 12 States are reported to have specific laws regulating their use** (Source: https://www.rightofassembly.info).

RECOMMENDATIONS TO STATES AND BUSINESSES

The report sets out a number of recommendations to **States and to business enterprises** on how to comply with international law, in particular, the right to privacy (Article 17 ICCPR), freedom of expression (Article 19 ICCPR), and peaceful assembly and association (Article 21 and 22 ICCPR) and meet their responsibility to respect all human rights.

States should:

- Close the digital divide by securing affordable internet access;

- Avoid disruptions or shutdowns to the internet;

- Ensure that any interference with the right to privacy, including by surveillance and intelligence-sharing, complies with international human rights law and the principles of legality, necessity and proportionality;

- Promote and protect strong encryption and anonymity options online, and ensure that laws provide for judicial supervision for any lifting of anonymity;

- Prohibit targeted and indiscriminate use of surveillance technologies online and offline, using them only where a reasonable suspicion exists under the law;

- Never use facial recognition technology to identify those peacefully participating in an assembly;

- Ideally, establish a moratorium on the use of facial recognition technology in the context of peaceful assemblies;

- In case facial recognition tool are already in use, then: systematically conduct human rights due diligence before deploying facial recognition technology devices and establish effective, independent and impartial oversight mechanisms for the use of facial recognition technology;

- Put in place strict privacy and data protection laws that regulate the collection, retention, analysis and otherwise processing of personal data, including facial templates;

- When relying on private companies to procure or deploy these facial recognition technologies, request that companies carry out human rights due diligence analysis of the devices;

- Apply the standards of necessity and proportionality rigorously to the use of less-lethal weapons, including by refraining from the use of such weapons in situations of crowd control that can be addressed through less harmful means;

- Ensure accountability for human rights violations related to the improper use of less-lethal weapons and ammunition by law enforcement in the context of assemblies through judicial or non-judicial mechanisms, such as commissions of inquiry;

- Ensure that investigations into the misuse of less-lethal weapons and ammunition by law enforcement are effective, transparent, prompt, independent and impartial.

Business enterprises should:

- Make all efforts to meet their responsibility to respect all human rights, including through the full operationalisation of the Guiding Principles on Business and Human Rights. The Principles imply conducting effective human rights due diligence across their operations and in relation to all human rights, including the right of peaceful assembly;

- As part of due diligence, carry out, a thorough human rights impact assessment prior to any potential transaction involving surveillance technologies;

- Challenge Internet shutdown requests from governments;

- When developing and manufacturing less-lethal weapons and ammunition, provide information about specific risks these may pose, and be transparent about technical specifications, design features and safety analyses conducted