



Human Rights Law Clinic Papers 2016

THE ENJOYMENT BY WOMEN OF THEIR RIGHT TO PEACEFUL ASSEMBLY

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Introduction

This memorandum explores the enjoyment of the right to freedom of peaceful assembly by women.¹ There has been limited previous research exploring the disparities between women and men in terms of their right to peacefully assemble. This memorandum seeks to contribute to filling this gap, and assesses the human rights implications arising from such inequalities. Women's experiences in terms of their right to peaceful assembly are examined and made integral to the protection of the right, in line with the 'gender mainstreaming' obligations of the Organization for Security and Co-operation in Europe (OSCE) and its Office for Democratic Institutions and Human Rights (ODIHR).² Recommendations to encourage the facilitation of the freedom of peaceful assembly enjoyed by women through the creation of an 'enabling environment' will be made with a view to informing future ODIHR assembly monitoring, capacity building activities, as well as the Office's expert advice in the area. The recommendations made are aimed at States, who have an obligation to facilitate peaceful assembly in order to uphold democratic principles. It is hoped that legislators, policy makers, police, regulatory authorities, women and human rights activists will also be mindful of the recommendations.

Freedom of peaceful assembly is a fundamental human right to be enjoyed and exercised by individuals, groups, unregistered associations, legal entities and corporate bodies. The protection of the freedom to peacefully assemble is essential in creating a tolerant and pluralistic society in which groups with different beliefs, practices and policies can exist peacefully together.³ It is a vital democratic freedom that enables individuals to act collectively to promote their interests. The right to peaceful assembly protects non-violent, organised gatherings for a common expressive purpose in public and private.⁴

The definition of assembly for the purposes of this memorandum, as taken from the ODIHR Guidelines on Peaceful Assembly (2010 Guidelines)⁵, is: "the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose".⁶

Women's rights, gender mainstreaming and the significance of peaceful assembly for women

In many parts of the world women experience the consequences of a lack of equal rights to men in continuing gender-based discrimination, unequal and poor pay, high levels of violence and continuing exclusion from political arenas.⁷ The impact of historic exclusion of

¹ Hereinafter, 'the right to peaceful assembly' will refer to 'the right to freedom of peaceful assembly' (which is the ODIHR's preferred term), in the interests of space.

² Decision No. 14/04, 2004 Action Plan for the Promotion of Gender Equality. (OSCE, 7 December 2004). A available at <https://www.osce.org/mc/23295?download=true> (accessed 9 February 2016).

³ Guidelines on Freedom of Peaceful Assembly (Second Edition). (OSCE/ODIHR and the Venice Commission, 2010). Available at <http://www.osce.org/files/documents/4/0/73405.pdf> (accessed 8 February 2016), p. 15.

⁴ Boyle, K., and Shah, S. 'Thought, Expression, Association and Assembly', in Moeckli, D., Shah, S., and Sivakumaran, S. (2014). *International Human Rights Law*. Oxford, Oxford University Press, pp. 217-237, p. 234.

⁵ This definition is due to change with the revision of the Guidelines, and the new definition will like remove the temporary nature, to allow for occupy movements.

⁶ Guidelines on Freedom of Peaceful Assembly (Second Edition), op. cit., p. 15.

⁷ Cornwall, A., and Molyneux, M. (2008). *The Politics of Rights: Dilemmas for Feminist Praxis*. London, Routledge, p. 1.

women continues to be felt in the underrepresentation of women in those public decision-making bodies of the global community that frame the dimensions of human rights.⁸ Patriarchal attitudes and stereotypes in societies that still promote a narrow understanding of the role of women as being confined to the private sphere prevent women from organising and participating in activities in the public sphere.⁹

Women's participation in public and political life

Women's empowerment through public and political participation is crucial not only because of the impact that it can have on policy formulation but also to ensure the absolute recognition of women as full members of the community.¹⁰ Yet women have historically been excluded to a great extent from civic and political participation,¹¹ and confined to duties in the home.¹² This public-private dichotomy has not only sabotaged women's participation in the public sphere but – even more invidiously – has denied women their humanity because the public sphere is the space in which decisions on matters of common interest are made.¹³ The suffrage movement exemplified how the right of assembly can effect change in a democracy. Linda Lumsden argues that “the most ancient and basic principle of a free society, the right of assembly served suffragists well during the 1910s”. She argues that the streets are the most public and accessible forum, and that the right of assembly was instrumental in helping 19th Century American women acquire a feminist consciousness.¹⁴ She recalls how extra-legal cultural proscriptions denied women the right of assembly among other constitutional rights in 18th Century America; a time when freedom of expression was linked to politics, and politics belonged in the public sphere, which remained exclusive of women.¹⁵

Gender mainstreaming

International human rights law (IHRL) prohibits discrimination against women in their enjoyment of all human rights and fundamental freedoms, and there have been many efforts to address the resulting marginalisation of women's rights, including the strategy of ‘gender mainstreaming’ in the application of general human rights instruments.¹⁶ This strategy was adopted by the 1993 Vienna World Conference on Human Rights and reaffirmed by the Beijing World Conference on Women,¹⁷ and seeks to reinterpret

⁸ O'Hare, U. (1999). Realizing Human Rights for Women. 21, *Human Rights Quarterly*, 364-402. p.367.

⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/HRC/26/29 (2014), paragraph 66.

¹⁰ Sener, T. (2014). Civic and Political Participation of Women and Youth in Turkey: An Examination of Perspectives of Public Authorities and NGOs. 10(1), *Journal of Civil Society*, 69-81, p. 75.

¹¹ *Ibid.*, p. 69.

¹² Lumsden, L. (1997). *Rampant Women. Suffragists and the Right of Assembly*. Knoxville, The University of Tennessee Press, p. xviii.

¹³ *Ibid.*, p. xix.

¹⁴ *Ibid.*, p. xvii.

¹⁵ *Ibid.*, p. xvii-xviii.

¹⁶ Otto, D. ‘Women's Rights’, in Moeckli, D., Shah, S., and Sivakumaran, S. (2014). *International Human Rights Law*. Oxford, Oxford University Press, 316-332. p. 316.

¹⁷ *Gender Mainstreaming: Strategy for Promoting Gender Equality*. (Office of the Special Advisor on Gender Issues and Advancement of Women, August 2001). Available at <http://www.un.org/womenwatch/osagi/pdf/factsheet1.pdf> (accessed 15 February 2016).

mainstream human rights to be inclusive of women's experience.¹⁸ This has eventually been supplemented by the adoption of General Comments by four of the UN treaty bodies,¹⁹ aimed at comprehensively incorporating women's experience of human rights violations into the coverage of respective treaty texts.²⁰

Hilary Charlesworth notes that: "The idea behind gender mainstreaming is that questions of gender must be taken seriously in central, mainstream, "normal" institutional activities and not simply left in a marginalized, peripheral backwater of specialist women's institutions".²¹ While these efforts have been successful in many respects, there are continuing practical and conceptual problems, including the limitations of anti-discrimination laws and the danger that specific recognition of women's rights violations may simply reproduce women's secondary status.²² These will be explored below when examining the potential dangers of special measures.

Gender mainstreaming commitments in the OSCE

In December 2004, the OSCE adopted Decision No.14/04, the Action Plan for the Promotion of Gender Equality.²³ This was partly to address some of the shortcomings²⁴ of the implementation of the 2000 OSCE Action Plan for Gender Issues.²⁵ Here, commitment was given to making equality between women and men an integral part of OSCE policies, both at the level of States and within the Organization. It was recognised that mainstreaming a gender perspective means assessing the implications for women and men of any planned action in all areas and at all levels:

"It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally".²⁶

In the 2004 Action Plan, it was specifically emphasised that there should be a particular focus on "women's empowerment and the participation of women as well as men in public, political and economic life in the context of democratic and economic processes in participating States".²⁷ This memorandum seeks to contribute to gender mainstreaming by

¹⁸ Otto, op. cit., p. 318.

¹⁹ UN Human Rights Committee, CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women); UN Committee on the Elimination of Racial Discrimination, CERD General Comment XXV; UN Committee on Economic, Social and Cultural Rights, CESCR General Comment 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights; and UN Committee on the Prevention of Torture, UNCAT General Comment 2.

²⁰ Otto, op. cit., p.328.

²¹ Charlesworth, H. (2005). Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations. 18, Harvard Human Rights Journal, 1-18. p. 1.

²² Otto, op. cit., p. 316.

²³ Decision No. 14/04, 2004 Action Plan for the Promotion of Gender Equality, op. cit.

²⁴ OSCE Human Dimension Commitments: Volume 2, Chronological Compilation (third edition). (OSCE/ODIHR, 2011). Available at <http://www.osce.org/odihr/76895?download=true> (accessed 10 March 2016), p. 265.

²⁵ Decision No. 353, OSCE Action Plan for Gender Issues. (OSCE, 1 June 2000). Available at <http://www.osce.org/pc/26462?download=true> (accessed 20 February 2016).

²⁶ Decision No. 14/04, 2004 Action Plan for the Promotion of Gender Equality, op. cit., p. 2.

²⁷ Decision No. 353, OSCE Action Plan for Gender Issues, op. cit., p. 7.

examining women's experiences in terms of their right to peaceful assembly and to make these integral to the protection of the right.

Motives and reasons for women-specific assemblies

Given that women have been persistently discriminated against, there are many specific reasons why women peacefully assemble and protest,²⁸ and many such assemblies are premised on issues pertaining to women's rights. This has been seen recently in Cologne, Germany, where hundreds of women protestors responded to what they saw as the incompetence of the police in dealing with the mass sexual assaults that occurred on the New Years Eve of 2015.²⁹ Women assembling carried banners bearing the words "no violence against women" and "protect our women and children".³⁰ Often women assemble to protest about gender gaps in their countries, particularly in terms of economic participation and opportunity, as seen recently in Italy³¹ and Turkey.³² Women peacefully assembled in Luxembourg in March 2016 for International Women's Day, to protest against sexism and to call for greater respect for the diversity of women.³³ In December 2015, protests took place in Poland as proposed laws are expected to curtail women's rights, including a total ban on abortion and withdrawal from the Council of Europe's Istanbul Convention, the convention on preventing and combating violence against women and domestic violence.³⁴

Valeria Bonetto explored the specific reasons for women and mothers mobilising and protesting against toxic waste in Campania, Italy. Some pollutants and hazards damage women's health more than men's; thus, many women mobilised against toxic waste, landfills and incinerators in Campania in response to the threats these pose to their families, to pregnant women, and to their communities. Bonatti argues that "the underlying association of traditional gender norms with environmental preservation... is controversial" and that such ideology may enable and yet constrain women's engagement with the public

²⁸ The Right to Freedom of Assembly in the Euro-Mediterranean Region. (Euro-Mediterranean Human Rights Network, November 2013). Available at http://euromedrights.org/wp-content/uploads/2015/03/FOA2013_EN_FULL-REPORT_WEB_26NOV2013.pdf (accessed 25 February), p. 9.

²⁹ Graham-Harrison, E. Cologne protests over sex attacks: 'I am full of sorrow for Germany. (The Guardian, 9 January 2016). Available at <http://www.theguardian.com/world/2016/jan/09/cologne-protests-sex-attacks-germany> (accessed 9 January 2016).

³⁰ Watch: hundreds of women stage anti-violence protest in Cologne. (The Telegraph, 9 January 2016). Available at <http://www.telegraph.co.uk/news/worldnews/europe/germany/12090908/Watch-hundreds-of-women-stage-anti-violence-protest-in-Cologne.html> (accessed 9 January 2016).

³¹ Hooper, J. Silvio Berlusconi the focus of day of protests by Italian women. (The Guardian, 13 February 2011). Available at <http://www.theguardian.com/world/2011/feb/13/silvio-berlusconi-protests-italian-women> (accessed 3 March 2016).

³² Orsal, O. Turkish police fire rubber bullets to break up Women's Day rally. (Reuters, 6 March 2016). Available at <http://www.reuters.com/article/us-turkey-women-idUSKCN0W80WW> (accessed 7 March 2016).

³³ Women protest against sexism in Luxembourg. (Luxemburger Wort, 8 March 2016). Available at <http://www.wort.lu/en/community/international-women-s-day-women-protest-against-sexism-in-luxembourg-56deec761bea9dff8fa741ef> (accessed 15 March 2016).

³⁴ Smith, A.D. Protests in Poland as proposed laws curtail women's rights. (The Guardian, 23 December 2015). Available at <http://www.theguardian.com/world/2015/dec/23/protests-in-poland-as-proposesd-laws-curtail-womens-rights> (accessed 15 March 2016).

sphere by risking reinforcing essentialist notions of womanhood.³⁵ However, it was counter-argued that deploying a seemingly traditionalist discourse on gender roles can be strategic in dismantling patriarchal narratives, as in this way the sphere of private life can be linked to the sphere of national politics. Therefore, Bonetto argues that women's groups in Campania successfully turned their everyday experiences of a polluted environment into claims for just governance through their traditional roles of caregivers for sick children and family members.³⁶

Disparities between women and men in their enjoyment of the right to peacefully assemble: applicable law and standards

Freedom of peaceful assembly

The right to peaceful assembly is protected by various international laws and standards, and is often protected alongside the right to freedom of association.³⁷ Article 20(1) Universal Declaration of Human Rights (UDHR) first declared that: "Everyone has the right to freedom of peaceful assembly and association".³⁸ Other international standards which protect the right to peaceful assembly include: Article 21 of the International Covenant on Civil and Political Rights (ICCPR);³⁹ Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);⁴⁰ Article 7(c) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);⁴¹ Article 15 on the Convention on the Rights of the Child (CRC) and the International Labour Organization (ILO)'s Convention No. 87 on Freedom of Association and Protection of the Right to Organise.⁴² Relevant regional standards include Article 15 of the American Convention on Human Rights (ACHR),⁴³ Article 12 of the Charter of Fundamental Rights of the European Union and Article 11 of the European Convention on Human Rights (ECHR).⁴⁴

Restrictions on the exercise of these rights must be prescribed by law and be necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the right and freedoms of others.⁴⁵

³⁵ UN Committee on the Elimination of Discrimination Against Women, General Recommendation No.23: Political and Public Life. UN Doc A/52/38 (1997), paragraph 12, which highlights that stereotyping confines women in political life to issues like the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution.

³⁶ Bonatti, V. (2015). Mobilizing around Motherhood: Successes and Challenges for Women Protesting against Toxic Waste in Campania, Italy. 26(4), Capitalism Nature Socialism, 158-175. p. 163-4.

³⁷ Boyle and Shah, *op. cit.*, p. 234.

³⁸ Universal Declaration of Human Rights, adopted under General Assembly Resolution 217A (1948), Article 20(1).

³⁹ International Covenant on Civil and Political Rights, Article 21.

⁴⁰ International Covenant on Economic, Social and Cultural Rights, Article 8.

⁴¹ Convention on the Elimination of all Forms of Discrimination Against Women, Article 7(c).

⁴² International Labour Organization's Convention No. 87 on Freedom of Association and Protection of the Right to Organize.

⁴³ American Convention on Human Rights, Article 15.

⁴⁴ European Convention on Human Rights, Article 11.

The 2010 Guidelines on Freedom of Peaceful Assembly,⁴⁶ prepared by the OSCE/ODIHR Panel of Experts on the Freedom of Assembly and the Council of Europe's European Commission for Democracy through Law (Venice Commission), provide the most comprehensive elaboration on the implementation of the right to peaceful assembly. They "offer a practical toolkit for legislators and practitioners responsible for implementing laws" and are to be viewed as a living instrument.⁴⁷ Paragraph 9.2 of the OSCE Copenhagen Document 1990,⁴⁸ provides that "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 standards."⁴⁹ And yet these instruments fail to give effect to gender mainstreaming through the examination of women's experiences and the identification of corresponding measures, by failing to provide guidance and protection which specifically facilitates *women's* right to peaceful assembly.

General Comment No. 25 of the UN Human Rights Committee states that: "Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community". The document declares that "no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, paragraph 1"⁵⁰ of the ICCPR, one of which is sex. Also at the UN level, the Human Rights Council adopted Resolution 15/21 in October 2010 on 'The rights to freedom of peaceful assembly and of association'.⁵¹ Here it was recognised that the right is an essential component of democracy.⁵² The same resolution appointed a Special Rapporteur on the rights of freedom of peaceful assembly and of association, one of the specific tasks of that mandate being to "integrate a gender perspective".⁵³ Most recently, the Council's 2013 Resolution 24/5 "[s]tresses that respect for the rights to freedom of peaceful assembly and of association ... contributes to addressing and resolving challenges and issues that are important to society, such as ... empowering women".⁵⁴

Women-specific provisions

The Beijing Declaration and Platform for Action was adopted after the Fourth World Conference on Women in September 1995,⁵⁵ and represented an effort to achieve a global consensus.⁵⁶ It declared that "[w]omen's empowerment and their full participation on the

⁴⁵ ICCPR, Article 21; ECHR; Article 11.

⁴⁶ Guidelines on Freedom of Peaceful Assembly (Second Edition), op. cit.

⁴⁷ *Ibid.*, p.10.

⁴⁸ For other key OSCE commitments on freedom of peaceful assembly, see Annex 2 of Report on Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (OSCE/ODIHR, May 2013 – July 2014). Available at <http://www.osce.org/odihr/132281?download=true> (accessed 15 February 2016), p. 91.

⁴⁹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. (OSCE, 1990). Available at <http://www.osce.org/odihr/elections/14304?download=true> (accessed 30 February 2016).

⁵⁰ UN Human Rights Committee, General Comment No. 25, UN Doc CCPR/C/21/Rev.1/Add.7 (1996), para 6.

⁵¹ UN Human Rights Council, Resolution 15/21 (2010).

⁵² *Ibid.*, p. 1.

⁵³ *Ibid.*, para 5(d).

⁵⁴ UN Human Rights Council, Resolution 24/5 (2013), p. 2.

⁵⁵ United Nations, Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women. 27 October 1995. Available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> (accessed 9 February 2016).

⁵⁶ Merry, S.E. (2006). Human Rights and Gender Violence: Translating International Law into Local Justice. Chicago, Chicago University Press, p. 89.

basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace”.⁵⁷ Thus, States are required to remove all obstacles that impede the free and full exercise of the freedom of women to congregate with others and be involved with affairs that bypass the private and familial sphere.⁵⁸

Article 3 of CEDAW is a general provision which states that “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”.⁵⁹ Article 7 goes on to declare that “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country”,⁶⁰ in respect of which the freedom of peaceful assembly has been read into Article 7(c).⁶¹ General Recommendation No. 23 of the CEDAW Committee, on Article 7, states that CEDAW “places special importance on the participation of women in the public life of their countries”.⁶²

OSCE Decision No. 7/09 on ‘Women’s Participation in Political and Public Life’ recalls the OSCE commitments for the advancement of gender equality, non-discrimination and promotion of men’s and women’s equal right to participate in political and public life, and calls on participating States to “[c]onsider possible legislative measures, which would facilitate a more balanced participation of women and men in political and public life and especially in decision-making”.⁶³

Case-law and examples

Facilitation of peaceful assemblies by States

As stated above, the right to peaceful assembly can be limited and restricted in certain circumstances. Outright banning of demonstrations can sometimes prove necessary, although this requires the strongest justification. In *Öllinger v Turkey*, the European Court of Human Rights (ECtHR) held that the State’s duty to protect the right of assembly as far as possible should have included considering alternatives to a total ban on a small counter-protest at a cemetery on All Saints Day where a commemoration was taking place for former SS soldiers.⁶⁴

Undue delays or arbitrariness in the issuance or non-issuance of permits to peacefully assemble can also constitute a violation of the right. In *Baczowski v Poland*, the ECtHR held that the mayor of Warsaw’s refusal to authorise a march and other public gatherings to protest over discrimination, including against homosexual people, constituted a

⁵⁷ Beijing Declaration and Platform for Action, op. cit., 13.

⁵⁸ The Right to Freedom of Assembly in the Euro-Mediterranean Region, op. cit., p. 24.

⁵⁹ CEDAW, Article 3.

⁶⁰ CEDAW, Article 7.

⁶¹ The Right to Freedom of Assembly in the Euro-Mediterranean Region, op. cit., pp. 23-24.

⁶² CEDAW General Recommendation No. 23, op. cit.

⁶³ Decision No. 7/09, Women’s Participation in Political and Public Life. (OSCE, 2 December 2009). Available at <http://www.osce.org/mc/40710?download=true> (accessed 13 March 2016).

⁶⁴ *Öllinger v Turkey* (2008) 46 EHRR 38.

discriminatory interference with the right to peaceful assembly. The mayor had publicly announced before considering the applications for permits that he would ban any public propaganda for homosexuality.⁶⁵ Thus, it would appear that if an application for a peaceful assembly to protest for women's rights were refused purely on the grounds that it would be seen as 'propaganda for women's rights' then this too would (at least in the eyes of the ECtHR) constitute a discriminatory interference with the right to peaceful assembly. Where assemblies are unauthorised, the penalties for participation must be justified and necessary.⁶⁶

The right to peaceful assembly extends to counter-protests, although the ECtHR has held that States have an obligation to ensure counter-demonstrators do not interfere with the initial demonstration.⁶⁷ Arguably this is particularly important for women who are attempting to peacefully assemble about issues relevant for women, because it is crucial that counter-demonstrators trying to undermine the sole purpose of the assembly do not further marginalise women. This issue came to fruition in Egypt and is discussed below. It was also problematic in *Güneri and Others v Turkey*, where demonstrations organised by the Equality Foundation to alert the public to the issue of discrimination against minorities and women were banned, while other assemblies conveying a counter-message were authorised on the same day.⁶⁸

Sexual harassment

Although Egypt is not an OSCE participating State, recent events highlight the importance of recognising the disparities between women and men in their enjoyment of the right to peacefully assemble. The sexual harassment experienced, particularly during protests at Tahrir Square in 2011 and 2012, is very specific to women, and has been seen as an "organised attempt to drive women out of demonstrations and trample the pro-democracy protest movement".⁶⁹ As discussed above, women often need to protest about women-specific issues and, in Egypt, women have protested about the very fact that they are subjected to sexual harassment when they protest, demanding an end to such assaults. This makes the peaceful protest that took place on 8 June 2012 especially disturbing, given that men waded into a group of around 50 women, who were surrounded by a protective ring of men joining hands, and sexually assaulted them.⁷⁰ In the 2013 Regional Study on 'The Rights of Freedom of Assembly in the Euro-Mediterranean Region', it was acknowledged that female protestors in Egypt have been repeatedly exposed to brutal sexual violence by state and non-state actors.⁷¹ Human Rights Watch's report, 'Good Girls Don't Protest', which is about the repression and abuse of women human rights defenders, activists and protestors in Sudan, further illustrates the point. Although Sudan is also not an OSCE participating

⁶⁵ *Baczkowski v Poland* (2009) 48 EHRR 19.

⁶⁶ *Gryb v Belarus*, Human Rights Committee Communication 1316/2004, UN Doc CCPR/C/103/D/1316/2004 (2011).

⁶⁷ *Plattform 'Ärzte Für Das Leben' v Austria* (1988) 13 EHRR 204.

⁶⁸ Salát, O. (2015). *The Right to Freedom of Assembly*. Oxford, Hart Publishing, p. 97.

⁶⁹ [Egyptian women protestors sexually assaulted in Tahrir Square](http://www.theguardian.com/world/2012/jun/09/egyptian-women-protesters-sexually-assaulted). (The Guardian, 9 June 2012). Available at <http://www.theguardian.com/world/2012/jun/09/egyptian-women-protesters-sexually-assaulted> (accessed 10 March 2016).

⁷⁰ *Ibid.*

⁷¹ *The Right to Freedom of Assembly in the Euro-Mediterranean Region*, op. cit., p. 42.

State, the attention drawn to the sexual violence experienced by women protestors is particularly significant here. It was found that victims of sexual violence lacked protection and avenues to remedy or assistance, as they may be reluctant to report their experiences for fear of reprisals.⁷²

Dispersing peaceful assemblies: disproportionate and indiscriminate use of force

In March 2006, women attempted to exercise their right to peacefully assemble in Beyazit Square, Istanbul, to celebrate Women's Day. Police officers hit a large number of demonstrators with their truncheons and sprayed them with tear gas. Women were also dragged away and beaten by police.⁷³ The case of *İzci v. Turkey*, heard by the ECtHR in 2013, explored these events, where the applicant claimed to have sustained serious injuries and been left semi-conscious when police hit her with truncheons until she fell to the ground and then continued to kick and beat her.⁷⁴ The Court held that "the police officers in the present case failed to show a degree of tolerance and restraint before attempting to disperse a crowd which did not present a danger to public order and was not engaging in acts of violence".⁷⁵ It was acknowledged that "the brutality of the dispersal had an inevitable dissuasive effect on people's willingness to demonstrate".⁷⁶ Accordingly, a violation of Article 11 of the ECHR (freedom of peaceful assembly) was found,⁷⁷ as well as a violation of Article 3 of the ECHR (prohibition of torture and ill-treatment).⁷⁸ Importantly for the purposes of this memorandum, the applicant complained of a violation of Article 14 of the ECHR (prohibition of discrimination) on the grounds that "she had wanted to take part in a demonstration during which problems faced by women were going to be voiced".⁷⁹ It is regrettable, however, that the ECtHR did not engage with this, declaring that it did not deem it necessary to examine this aspect of the complaint separately, having regard to its conclusions under Articles 3 and 11.⁸⁰

Maina Kiai, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, expressed his utmost concern in his 2012 report over peaceful assemblies that are violently dispersed.⁸¹ In particular, with regard to the use of tear gas, he reminds that "gas does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions".⁸² Reference was made to this report in *İzci v. Turkey*.⁸³

⁷² "Good Girls Don't Protest". (Human Rights Watch, 23 March 2016). Available at <https://www.hrw.org/report/2016/03/23/good-girls-dont-protest/repression-and-abuse-women-human-rights-defenders> (accessed 26 March 2016).

⁷³ Press Release: Turkey needs to adopt new measures to prevent the police from using disproportionate violence and unnecessary and excessive tear gas during peaceful demonstrations. (European Court of Human Rights, 23 July 2013). Available at <file:///Users/beatricewebster/Downloads/003-4443118-5346250.pdf> (accessed 11 March 2016).

⁷⁴ *İzci v. Turkey* (2013) (Application no. 42606/05), paragraphs 7-8.

⁷⁵ *Ibid.*, paragraph 67.

⁷⁶ *Ibid.*, paragraph 90.

⁷⁷ *Ibid.*, paragraph 91.

⁷⁸ *Ibid.*, paragraph 107.

⁷⁹ *Ibid.*, paragraph 92.

⁸⁰ *Ibid.*, paragraph 93.

⁸¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/HRC/20/27 (2012), paragraph 34.

⁸² *Ibid.*, paragraph 35.

⁸³ *İzci v. Turkey*, op. cit., paragraph 37.

On 6 March 2016, Turkish police fired rubber bullets to disperse a crowd of women in Istanbul trying to mark International Women's Day and draw attention to women's issues in Turkey. Plain-clothed police are reported to have shoved members of the group and fired rubber bullets into the crowd.⁸⁴ This is problematic for many reasons, one of which is that the 2010 Guidelines prescribe that law-enforcement personnel should be clearly and individually identifiable.⁸⁵ The female protestors had assembled despite a ban on the rally by the Istanbul Governor, who cited security concerns as justification for the restriction.⁸⁶ It is not clear what was meant by this, and the 2010 Guidelines suggest that "[t]he regulatory authorities must not raise obstacles to freedom of assembly unless there are compelling arguments to do so".⁸⁷ Assuming that there were legitimate grounds for the ban on the assembly, this may have called for a dispersal of the crowd, although the 2010 Guidelines recommend that "[w]here an assembly occurs in violation of applicable laws, but is otherwise peaceful, non-intervention or active facilitation may sometimes be the best way to ensure a peaceful outcome".⁸⁸ The Istanbul rally did appear peaceful, and the violent means of dispersal was certainly disproportionate.⁸⁹ It should further be noted that the various methods of violent dispersal used could be particularly dangerous and damaging for pregnant women, who are particularly vulnerable. The firing of rubber bullets has been found to be inaccurate; thus vulnerable areas such as the stomach cannot be avoided.⁹⁰ This could obviously do serious damage to a developing foetus.

A further recent example can be seen in the use of force by police when arresting members of the Armenian Women's Front in Yerevan, Armenia, who were peacefully protesting on 14 March 2016.⁹¹ This is problematic given the peaceful nature of the demonstration.

The recent events in Turkey are particularly deplorable as Turkey struggles to establish a positive environment that promotes women's civil and political participation in general; and women's political representation remains highly restricted.⁹² Turkey has also sharply limited the right to peaceful assembly in recent years, giving police wider powers to detain protestors and the courts more power to convict them.⁹³

Intersectional discrimination

Intersectional discrimination involves discrimination on multiple grounds simultaneously in such a way that these are mutually constitutive and inseparable.⁹⁴ The issue of

⁸⁴ Orsal, O. Turkish police fire rubber bullets to break up Women's Day rally, op. cit.

⁸⁵ Guidelines on Freedom of Peaceful Assembly (Second Edition), op. cit. paragraph 153.

⁸⁶ Turkey police attack Women's Day protestors. (PressTV, 6 March 2016). Available at <http://www.presstv.ir/Detail/2016/03/06/454190/Turkey-Istanbul-Ankara-Erdogan-International-Womens-Day> (accessed 7 March 2016).

⁸⁷ Guidelines on Freedom of Peaceful Assembly (Second Edition), op. cit., paragraph 70.

⁸⁸ Ibid., paragraph 155.

⁸⁹ Ibid., paragraph 171.

⁹⁰ Roche, L. (1983). Injuries caused by plastic bullets compared with those caused by rubber bullets. 321, *The Lancet*, 919-920. p. 919.

⁹¹ Members of Armenian Women's Front detained. (A1plus News from Armenia, 14 March 2016). Available at <http://en.a1plus.am/1230802.html> (accessed 19 March 2016).

⁹² Sener, op. cit., p. 72.

⁹³ Orsal, O. Turkish police fire rubber bullets to break up Women's Day rally, op. cit.

⁹⁴ Onufrio, M.V. (2014). Intersectional discrimination in the European legal systems: Toward a common solution? 14(2), *International Journal of Discrimination and the Law*, 126-140. p. 127.

intersectional discrimination and freedom of peaceful assembly has very recently surfaced in Brussels, where far-right extremists directly targeted and intimidated Muslim women among peaceful protestors attempting to remember and pay respect to victims of the terrorist attacks in Brussels on 22 March 2016.⁹⁵

Maina Kiai, in his 2014 report, drew attention to the fact that numerous jurisdictions have in recent years banned peaceful protesters from covering their faces during demonstrations and expressed concern that “bans on face coverings during assemblies are in some circumstances used to target particular groups and improperly curtail their right to freedom of peaceful assembly”.⁹⁶ Orsolya Salát argues that the ‘burqa ban’ can be criticised because it deprives burqa-wearing women from their right to assembly.⁹⁷ She goes on to state that “the individual cannot be made to choose between exercising her freedom of assembly or freedom of religion”.⁹⁸

Giving effect to women’s right to peaceful assembly

States have a duty to remove all obstacles that impede the free and full exercise of the right of women to congregate with others and participate in public and political life.⁹⁹ This memorandum has shed light on some of the specific restrictions and obstacles that women face in exercising this right, and now identifies recommendations to States on how best to facilitate women’s assemblies through creating an ‘enabling environment’.

Moving forward: general considerations

*Special measures for women*¹⁰⁰

The OSCE Guidelines on Freedom of Association declare that “certain differences in the treatment of associations ... can be justified with respect to associations that meet particular social needs, such as furthering equality between women and men”, and that this may involve taking positive measures to overcome specific challenges and address the needs confronting disadvantaged or vulnerable persons or groups, particularly those subject to intersectional discrimination.¹⁰¹ Article 4 of the CEDAW similarly emphasises that special

⁹⁵ Broomfield, M. Far-right protesters in Brussels targeted, ‘confronted’ and ‘intimidated’ Muslim women. (Independent, 28 March 2016). Available at <http://www.independent.co.uk/news/world/europe/400-fascist-protesters-in-brussels-square-confronted-and-intimidated-muslim-women-a6956196.html> (accessed 28 March 2016).

⁹⁶ The Right to Freedom of Assembly in the Euro-Mediterranean Region, op. cit., p. 24.

⁹⁷ Salát, op. cit., p. 233.

⁹⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, (2014), op. cit., paragraph 32.

⁹⁹ The Right to Freedom of Assembly in the Euro-Mediterranean Region, op. cit., p. 24.

¹⁰⁰ See UN General Assembly, Resolution 68/181 (December 2013), available at <http://www.osce.org/odihr/119633?download=true>, regarding specifically systemic and structural discrimination and violence faced by women human rights defenders of all ages; see also Commentary to the UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. (July 2011). Available at <http://www.osce.org/odihr/119633?download=true> (accessed 11 May 2016), pp.6-7 and 18-21; see also OSCE/ODIHR, Guidelines on the Protection of Human Rights Defenders. (2014). Available at <http://www.osce.org/odihr/119633> (accessed 11 May 2016), para 44.

¹⁰¹ Guidelines on Freedom of Peaceful Assembly (Second Edition), op. cit., p. 48.

measures taken by States to ensure *de facto* equality of women “shall not be considered discrimination”¹⁰² and the CEDAW Committee’s General Recommendation No. 5 “[r]ecommends that States Parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women’s integration into education, the economy, politics and employment”.¹⁰³ The Committee’s General Recommendation No. 23 also states that the “formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life”.¹⁰⁴

Otto has highlighted the controversy surrounding special measures for women, asserting that “in crafting laws that respond to the gendered realities of women’s lives, there is a risk of reconstituting gender stereotypes through reproducing those realities, rather than challenging them”. She has argued that special measures designed to address women’s specific injuries and disadvantages continue to affirm the maleness of the universal subject of human rights law.¹⁰⁵ However, she points out that a formal comparative approach ignores the need to create enabling circumstances that will make women’s enjoyment of rights possible, which may involve changing deeply embedded social and cultural attitudes that stigmatise or punish women for exercising their rights.¹⁰⁶ For the purposes of this memorandum, the use of special measures is deemed appropriate. As Sally Engle Merry has asserted, these measures are efforts to overcome past hindrances.¹⁰⁷ If thoughtfully and carefully implemented, it is argued that special measures could effect positive change for women attempting to exercise their right to peacefully assemble. Such facilitation measures may include making public statements in advance of assemblies to advocate, without any ambiguity, a tolerant, conciliatory stance.¹⁰⁸

Creating an ‘enabling environment’ for women

As stated in the 2010 Guidelines, three principles should be clearly articulated in legislation governing freedom of assembly: the presumption in favour of holding assemblies; the State’s duty to protect peaceful assembly; and proportionality.¹⁰⁹

The presumption in favour of holding assemblies means that States should do everything in their power to facilitate peaceful assemblies, and this is particularly important for women who have been marginalised and excluded from the public sphere. The phrase ‘enabling environment’ is used hereinafter, which is adopted in the Guidelines on Freedom of Association, and has been used within the UN in Human Rights Council Resolution 24/21¹¹⁰ and in the Beijing Declaration and Platform for Action.¹¹¹

¹⁰² CEDAW, Article 4.

¹⁰³ UN Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 5: Temporary Special Measures. UN Doc HRI/GEN/1/Rev.6 (1988).

¹⁰⁴ CEDAW General Recommendation No. 23, op. cit., paragraph 15.

¹⁰⁵ Otto, op. cit., p. 318.

¹⁰⁶ *Ibid.*, 322.

¹⁰⁷ Merry, S.E. (2006). Human Rights and Gender Violence: Translating International Law into Local Justice. Chicago, Chicago University Press, p. 75.

¹⁰⁸ *Identoba and Others v. Georgia* (2015) (Application no. 73235/12), para 99.

¹⁰⁹ Guidelines on Freedom of Peaceful Assembly (Second Edition), op. cit., p. 35.

¹¹⁰ UN Human Rights Council, Resolution 24/21 (2013).

Recommendations

Against this background, the following recommendations are aimed at encouraging States to create a safe and enabling environment by facilitating the peaceful assembly of women, as well as enabling them to pursue their objectives of defending women's rights and drawing attention to women's issues.¹¹²

Convening events specific to women's rights

Given women's exclusion from the public sphere, it is essential that women are given a voice through effective enjoyment of the right to peacefully assemble. States should ensure that women have access to the information needed to organise and take part in assemblies. This should include the provision of programmes that educate women on political empowerment through peaceful assembly. In countries where women may have been excluded from education, these should be made simple and accessible.

Notification and authorisation process

It is essential that States abide by the presumption in favour of holding assemblies in order to ensure that women are not further marginalised through not having assemblies authorised. When States do not authorise assemblies, clear and specific reasons should be given. The recent events in Turkey on International Women's Day 2016 highlighted the importance of this requirement; simply citing 'security concerns' is hopelessly vague and much more expansive explanation should be mandatory to establish a legitimate ground for a restriction. In addition, the State has to ensure that the restriction is proportionate by selecting the least intrusive measure necessary to achieve the stated objective. Programmes should be created to ensure that women are educated on how to complete the notification process.

Addressing particular risks

As has been seen in Egypt and Sudan, women have been subjected to sexual violence while peacefully assembling. States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of violence against women and girls.¹¹³ It is imperative that States provide a safe and enabling environment for women to peacefully assemble, without fearing physical abuse of any nature.¹¹⁴ This requires the provision of special protectionist measures including additional security and police who are trained in safeguarding women from sexual violence.¹¹⁵ Victims of sexual abuse must be ensured access to justice.¹¹⁶ This means that special training programmes for police and security services integrated with a gender perspective should be created.¹¹⁷

¹¹¹ Beijing Declaration and Platform for Action, op. cit.

¹¹² Guidelines on Freedom of Association, op. cit., p.18.

¹¹³ Decision No. 15/05: Preventing and combating violence against women. (OSCE, 6 December 2005). Available at <http://www.osce.org/mc/17451?download=true> (accessed 1 April 2016), p. 1.

¹¹⁴ OSCE/ODIHR, Guidelines on the Protection of Human Rights Defenders. (ODIHR, 2014). Available at <http://www.osce.org/odihr/119633?download=true>, (accessed 11 May 2016), para 60.

¹¹⁵ Ibid., para 59.

¹¹⁶ "Good Girls Don't Protest", op. cit.

¹¹⁷ The Right to Freedom of Assembly in the Euro-Mediterranean Region, op. cit., p. 25.

Law enforcement action

It must be stressed that law enforcement action should be a last resort; law enforcement officials should not disperse women assemblies if they remain peaceful.¹¹⁸ Equally, women should not be arrested with force where assemblies are peaceful. States should prohibit the use of violent means in the dispersal of crowds, such as the use of tear gas and rubber bullets, neither of which discriminates between protestors and non-protestors, or women and pregnant women, who are particularly vulnerable.

Concluding remarks

This memorandum has explored the disparities between women and men while enjoying their right to peaceful assembly. Women continue to face obstacles to their participation in political and public life which, in the context of the enjoyment of the right to peaceful assembly, may entail danger to their physical and psychological integrity, sometimes taking extreme forms such as sexual abuse.

Notwithstanding the controversy surrounding special measures for women, it has been concluded that in the context of women's peaceful assemblies, some special protectionist measures are required to create an enabling environment for women to enjoy the right equally to men. Key recommendations have been identified in that regard.

The dearth in case-law surrounding women's peaceful assemblies could be explained by issues surrounding access to justice for women. It is crucial that there is a development of case-law by the relevant human rights bodies on cases where women have had their right to peaceful assembly curtailed. The much larger issue of whether women have access to appropriate avenues to seek redress for violations of the right needs to be explored and addressed in order to overcome deeply embedded obstacles to women's enjoyment of the right to peaceful assembly. As concluded by the CEDAW Committee in its General Recommendation No. 23: "The concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both".¹¹⁹

¹¹⁸ Guidelines on Freedom of Peaceful Assembly (Second Edition), op. cit., p. 81.

¹¹⁹ CEDAW General Recommendation No. 23, op. cit., at paragraph 14.