



15 October 2019

Laws on the Use of Force during Assemblies

Laws on the right of peaceful assembly worldwide

The Centre for Human Rights of the University of Pretoria has elaborated an online repository on laws governing the right of peaceful assembly worldwide (<https://rightofassembly.info>). The repository, which contains laws governing police use of force for all 197 states, in particular during assemblies, demonstrates that only a dozen states have specific legal guidance on use of less-lethal weapons.

Some states still have legislation that explicitly allows firearms to be used to disperse unlawful assemblies.¹ This is a serious violation of the right to life. Numerous others allow use of firearms for the “maintenance of public order” or to defend property. Neither is permissible under international law.

In Bhutan, non-lethal measures required before lethal force may be used to disperse an assembly include police batons, water cannon, tear gas, and rubber bullets. Similarly, Cameroon calls for tear gas and batons to manage assemblies before recourse to firearms where there is “serious and widespread violence”.²

In Brazil, a federal law on police use of less-lethal weapons was adopted in late 2014.³ It does not, though, set out in detail which weapon should be used in which circumstances. In Croatia, Article 64 of the 2008 Police Law specifically allows the dispersal of an assembly if a group has gathered and is acting unlawfully and with the risk that violence might occur. If the group does not disperse, the use is authorised of police vehicles, physical force, batons, chemical agents, water cannon, dogs, and horses.

One of the most detailed state-level regulations of less-lethal weapons during assemblies is in Chile. The use of force during assemblies is regulated by a series of protocols annexed to a 2019 Circular. These protocols govern the use of chemical irritants, rubber bullets, and firearms during and in connection with assemblies. With respect to chemical irritants, warnings should be given before use wherever possible (such as through the use of loudspeakers). Tear gas will be used against protesters engaged in violence or serious breaches of public order. In the central area of cities, however, the use of hand-held tear gas devices and tear-gas cartridges is restricted to urgent situations once other means of dispersal have been tried and failed. When they are used, special care must be taken especially in areas around hospitals, schools, kindergartens, and other similar institutions. When chemical irritants prove ineffective, it may be possible to use rubber bullets fired from shotguns.

¹ Bangladesh, Bhutan, Democratic Republic of Congo, Fiji, Namibia, Niger, Pakistan, and Tunisia.

² Law No. 90/054 of 19 December 1990 relating to Maintenance of Law and Order.

³ Federal law on Police Use of Less-lethal Weapons, Statute No. 13.060 of 22 December 2014.

In North Macedonia, chemical irritants (riot-control agents) are lawful to disperse an assembly “in cases of restoring public order and peace in a wider scope, as well as for forcing persons out of a closed area or for resolving hostage situations”, but “the life and health of the citizens must not be jeopardised.”⁴ However, use of chemical irritants in confined spaces is dangerous and may contravene international law.

In Paraguay, police use of force is regulated under the Manual on the Use of Force. It provides that:

“The use of a chemical agent, such as gas or pepper spray, may become necessary when police personnel reasonably believe that other force options would be inappropriate or ineffective to control alleged resistant or combative offenders, as well as to reduce the chances of physical injuries of the individuals involved. Tear gas or pepper spray should not be used against alleged perpetrators who demonstrate peacefully. In these cases, it can only be used when authorised as part of a crowd control strategy.”

In Romania, Article 34(1) of the 2002 Law on the Romanian Police allows the police to use a range of less-lethal weapons.

“For discouraging, stopping and neutralizing the aggressive actions of persons disturbing public order and safety, actions that could not be removed or annihilated by the use of other means, the police officers can use protection shields, helmets, rubber sticks, sticks with electrostatic energy, items with tear irritant and paralyzing substances, water jets, rubber bullet guns and handcuffs, trained dogs as well as other immobilization means which do not put life in danger or do not produce serious bodily harm.”

In Tunisia, according to the 1969 law on assemblies, if police officers call for the dispersal of a crowd and the demonstrators do not comply, the police are authorised to, progressively, use water cannon or baton charges; then fire tear gas; and ultimately use firearms.

In Ukraine, under Article 45 of the 2015 Law on the National Police governs the use of force, stipulating that police batons and chemical irritants may be used to stop "massive or group public disorders".

United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement

The Centre for Human Rights played a key role in the elaboration of the OHCHR Guidance on Less-Lethal Weapons in Law Enforcement. The Guidance describes how fundamental international human rights and criminal justice standards can be implemented, including during assemblies. According to paragraphs 6.3.2–6.3.6:

6.3.2 In an assembly in which certain individuals are behaving violently, law enforcement officials have a duty to distinguish between those individuals and the rest of the assembly participants,⁵ whose individual right to peaceful assembly should be unaffected. If it is decided that less-lethal weapons are an appropriate means of addressing individual acts of violence, then due care should be given to the likely proximity of third parties and bystanders.

⁴ Arts. 88 and 91, 2006 Law on Police.

⁵ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2019, Chap. 9 (“Human Rights and Policing of Public Assemblies”).

- 6.3.3 The use of less-lethal weapons to disperse an assembly should be considered a last resort. Before approving dispersal, law enforcement agencies should seek to identify and isolate any violent individuals separately from the main assembly, which may allow the assembly to continue.⁶ If these targeted interventions are ineffective, law enforcement officials may employ area impact weapons, such as water cannons and tear gas, after issuing an appropriate warning, unless providing the warning causes delay that either risks serious injury or will be futile in the circumstances. In addition, time should be given for participants in the assembly to obey the warning, and a safe space or route shall be ensured for them to move to.
- 6.3.4 The use of firearms to disperse an assembly is always unlawful. Only less-lethal weapons may be used in situations where some force is necessary. In such situations, less-lethal weapons that can be individually aimed shall target only individuals engaged in acts of violence. Weapons such as chemical irritants dispersed at a distance (tear gas) should be targeted at groups of violent individuals unless it is lawful in the circumstances to disperse the entire assembly. Such use should accord due consideration to the impact on other, non-violent participants or bystanders. In addition, when the use of any less-lethal weapons or related equipment is envisaged against assembly participants, due attention should be paid to the potential for panic in a crowd, including the risk of a stampede. Only weapons that meet international standards of accuracy may be used.
- 6.3.5 Physical barriers should never be such as to pose a risk to safety. Barbed wire, razor wire, or other spiked barriers typically create an undue risk of injury to participants in an assembly. Safer alternatives should be employed where a barrier is needed.
- 6.3.6 Medical personnel, whether they are acting officially or as volunteers, should be provided with safe access to attend to any injured persons.

⁶ “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, UN doc. A/HRC/31/66, 4 February 2016, para. 52; and Human Rights Council Resolution 25/38, para. 9.