

# **THE FUTURE OF THE FREEDOM OF ASSEMBLY**

## **IN NORTH MACEDONIA IN THE DIGITAL ERA**



# The Future of Freedom of Assembly in North Macedonia in the Digital Era

An Analysis

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The right to association and public assembly does not in itself mean only the association of citizens with a physical presence through which they would express dissatisfaction with a certain government decision that affects their rights and interests. In the last few years, there is a trend of increased use of Internet tools through which the citizens of a country can act in the online space just as they would act with a physical presence. In North Macedonia, the trend of using online tools is experiencing its peak with the proclamation of a Covid-19 pandemic.

The purpose of this Analysis is to summarize the International Legal Framework on the freedom of peaceful assembly in the digital era and to present the state obligations. Also, to research the opportunities and challenges of the assemblies in the digital era and the impact of the new technologies in exercising of the right to free assembly. In the same time to make comparison and research on the concept of digitally-mediated assemblies in North Macedonia, the practice, the legal framework, obligations and challenges in practicing this concept and give conclusions.

The analysis contains eleven chapters:

- I. The right to freedom of peaceful assembly in the digital age**
- II. International legal framework**
- III. State obligations in the protection of the freedom of peaceful assembly**
- IV. Role and responsibilities of the businesses in respecting peaceful assembly**
- V. New technologies and their influence to the freedom of assembly**
- VI. Domestic legal framework**
- VII. Use of Internet and digital technologies for exercising the freedom of assembly in North Macedonia**
- VIII. Interviews with organizers, activists and other stakeholders**
- IX. Survey Report**
- X. Case studies**
- XI. Policy recommendations and conclusions**

The main purpose of the Analysis is to identify the gaps in legislation which have negative impact on exercising freedom of assembly in a digital age - whether the existing legislation and practice meet the needs of the citizens for exercising the right of digitally-mediated assembly. The conclusions may be used for lobbying for legal changes that will be in accordance with international documents. Also, they may raise the awareness of activists and CSOs (youth and marginalized groups) on the legal issues regarding use of digital tools in exercising their freedom of assembly and promote the opportunities of this right in the digital era.

For the preparation of the Analysis, the researchers used a combined approach to data collection, documentation, and analysis. The analysis aims to achieve the following research goals:

- ➔ Identify legal gaps and shortcomings in existing legislation that have a negative impact on the enjoyment of the right to freedom of assembly in the digital age;
- ➔ Identify the problems and challenges faced by activists/citizens when holding a public gathering with physical presence and in the online space and
- ➔ Answer the question whether the current legislation meets the needs of citizens in exercising the right to public assembly in the online space.

To develop the methodology for this analysis we used the European Center for Not-for-Profit Law updated general methodology for monitoring the freedom of peaceful assembly and the outline of a monitoring tool to monitor the digitally mediated assemblies. In order to achieve all the above research goals, the following research methods were used:

**DESK RESEARCH** - consulting international literature and documents, international law, analyses, reports, recommendations and reactions of independent bodies in relation with the right to freedom of assembly and digitally-mediated assemblies. The desk research also included an analysis of reports of international organizations, EU progress reports as well as reports of national human rights NGOs. In parallel, desk research was conducted on national legislation, practice and trends.

**QUESTIONNAIRES** - The questionnaires were shared among young people, women, non-governmental sector employees, organizers of and participants in public gathering. The answers to the questionnaires contributed to the identification of the existing problems, challenges and trends related to the enjoyment of the right to public assembly (with physical presence and in the online space).

**INTERVIEWS** with protest organizers, participants, police officers, human rights/social rights/climate activist, NGO representatives and journalists. Based on the interviews, the researchers obtained information about the enjoyment of the right to public assembly in practice, their experiences, challenges and problems, and certainly, also opinions and suggestions for improving the exercise of this right. The answers of the interviewees contributed to the identification of the problems they face in practice and recommendations for its improvement were drawn.

**5 EXAMPLES/CASE STUDIES ON PROTEST/INITIATIVES** that outline important findings. Examples show different types of pressures and relate to different types of rights violations, and include both positive and negative practices. The examples vary from those talking about freedom of assembly issues, to those of ongoing pressures, and other rights violations and obstacles. Case studies cover assemblies with physical presence, assemblies organized online, initiatives and petitions.

Freedom of peaceful assembly is a fundamental human right that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies. Assemblies may serve many purposes, including the expression of diverse, unpopular or minority opinions. The right can be an important strand in the maintenance and development of culture, such as in the preservation of minority identities. The protection of the freedom to peacefully assemble is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices or policies can peacefully exist together.

The right to freedom of peaceful assembly is the fundamental right to collectively express, promote, pursue, and defend a common interest for whatever reason or motivation without fear of retribution. This right includes the right to participate in peaceful assemblies, meetings, protests, strikes, sit-ins, demonstrations, and other temporary gatherings for a specific purpose. Assemblies can be in public or private spaces; they may be online or offline; and they can be for a few hours, as well as a few months.<sup>1</sup>

This right can be enabled or enhanced through new technologies, including the internet, and the restrictions to this right when exercised through new technologies must be in accordance with international human rights law. The Internet and social media have greatly facilitated the exercise of fundamental rights including that of the right to freedom of peaceful assembly by buttressing the right to freedom of expression, which is inextricably linked with freedom of peaceful assembly.<sup>2</sup>

Internet-based technologies play an increasingly instrumental part in the exercise of the right to freedom of peaceful assembly and it is hard to imagine an assembly that does not involve some form of reliance on the Internet nowadays. Information and communication technologies (ICTs) are offering a unique and enabling space for the exercise and enjoyment of Freedom of association and assembly, making it possible for persons who may not be willing or able to take part in physical assemblies or associations to exercise these rights.

**Additionally, the COVID-19 pandemic has reemphasized that the world is no longer connected only through physical assemblies and associations. Rather, we gather and connect online — across physical borders — to voice opinions, call to action, express solidarity, and access important, life-saving information during unprecedented times.**

**FREEDOM OF PEACEFUL ASSEMBLY ONLINE** is the use of Information and communication technologies (new technologies) to exercise this right either wholly in online spaces or in conjunction with offline spaces. The Freedom of Assembly online can have two dimensions: one in which the exercise of the right is carried out wholly online, such as online petitions, protests and groups – including virtual protests and “hacktivism”;<sup>3</sup> and one in which IT technologies are used to support, enable, enhance and facilitate the assemblies and offline.<sup>4</sup> For

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<sup>1</sup> Former UN Special Rapporteur Maina Kiai, “What Are The Rights To Freedom Of Peaceful Assembly And Of Association?” (2019), <http://freeassembly.net/about/freedoms/>.

<sup>2</sup> Guidelines on freedom of assembly. OSCE Office for Democratic Institutions and Human rights. July 2019

<sup>3</sup> According to ARTICLE 19, “hacktivism” or “hacktivism” is defined as “a collective action of technologically-skilled

Individuals through the use of digital technologies to protest without gathering in person.” Most acts in this category are considered a form of “electronic” civil disobedience due to related violation of the law. The organization argues that international law allows for consideration of these actions as forms of freedom of expression and assembly. See the ARTICLE 19 for their background paper on the right to protest:

<https://right-to-protest.org/wp-content/uploads/2015/06/Right-to-Protest-Background-paper-EN.pdf>

<sup>4</sup> Venkiteswaran, G. (2016). Freedom of assembly and association online in India, Malaysia and Pakistan: Trends, Challenges and recommendations. Association for Progressive Communications.

<https://www.apc.org/en/pubs/freedom-assembly-and-association-online-india-mala>

example, the mobilization of people through online posts to gather in offline spaces and extend the conversation on the agenda. In many instances, Freedom of assembly is exercised online even after the physical event has taken place or it ceases to exist and the activism, discussion and the initiative continues taking other forms.

Associations or associating online refer to the act of forming groups, including informal ones, online, with or without moderators or group leaders. Peaceful assembly online refers to an intentional and temporary gathering in a private or public online space for a specific purpose.<sup>5</sup> Although it is established that human rights standards apply in online spaces, often the new technologies enable new expressions of rights which do not have direct parallels with traditional expressions of those rights. Freedom of assembly carried out wholly online is one of these cases. As Human Rights Council (HRC) resolution 38/11 noted, although an assembly has generally been understood as a physical gathering of people, human rights protection, including for freedom of assembly, may apply to analogous interactions taking place online.<sup>6</sup>

Some examples of freedom of assembly carried out wholly online include people gathering in an online social media platform to jointly protest against a law, policy, or act of injustice. While offline assemblies may be restricted to physical spaces and limited to the participation of individuals present in that space in real time, online assemblies can be more fluid and witness the simultaneous and extended participation of individuals situated in different physical spaces, yet meeting in the online space for a common purpose. Other examples of the simultaneous use of digital technology to engage in collective action, such as “virtual sit-ins”, distributed denial of service (DDoS) attacks, website redirects or defacement, Twitter storms,<sup>7</sup> and coordinated website blackouts or changing of profile photos, are emerging as a form of protest or awareness raising.

There are also a number of forms of freedom of assembly which include both online and offline dimensions: for example, the acts of coordinating, mobilizing, organizing, gathering, planning or meeting on platforms available online such as instant messaging, voice over internet protocol (VoIP), chat applications, email groups and mailing lists, inter alia. Another key contribution of Information and Communication technologies is providing assemblies the ability to undertake actions and sustain them online for prolonged periods, especially in relation to online campaigns and targeted advocacy aimed at different stakeholders.

**Online and offline spaces can no longer be regarded as distinct and disconnected; rather, like people’s lives, they must be viewed as a continuum.**

As a result, the exercise of freedom of assembly online may take different and evolving forms, which in their spirit are similar to the exercise of this freedom offline. Therefore, standards and protections available to Freedom of Association and Assembly offline must be extended and adapted to online spaces keeping in mind the dynamic, fluid and ever evolving nature of Information and Communication Technologies (ICTs).

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<sup>5</sup> Venkiteswaran, G. (2016). Association for Progressive Communications (APC). Freedom of assembly and association online in India, Malaysia and Pakistan: Trends, challenges and recommendations.

<sup>6</sup> 21A/HRC/31/66 (2016), para 10.

<sup>7</sup> <https://www.techopedia.com/definition/29624/twitterstorm>

The right to freedom of peaceful assembly and association is both a human right itself and an enabler of citizens' political participation in democratic governance. This right is also key to the achievement of economic, social and cultural rights.<sup>8</sup> The right to freedom of peaceful assembly and association is enshrined in the main universal legal instruments for the protection of civil and political rights. The right is covered in Article 20 of the **Universal Declaration on Human Rights (UDHR)** and Articles 21 and 22 (respectively) of the **International Covenant on Civil and Political Rights**<sup>9</sup>, then Article 5(d)(ix) of the **International Convention on the Elimination of All Forms of Racial Discrimination** and Article 15 of the **Convention on the Rights of the Child**. At European level, it is protected by Article 11 of the **European Convention on Human Rights (ECHR)**<sup>10</sup> and developed by a rich case-law of the European Court of Human Rights (ECtHR). Also in Article 12, **Charter of Fundamental Rights of the European Union**.

### ARTICLE 20(1), UNIVERSAL DECLARATION OF HUMAN RIGHTS

*Everyone has the right to freedom of peaceful assembly and association.*

### ARTICLE 21, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right 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, the protection of public health or morals or the protection of the rights and freedoms of others.*

### ARTICLE 15, CONVENTION ON THE RIGHTS OF THE CHILD

- 1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*
- 2. 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.*

### ARTICLE 11, EUROPEAN CONVENTION ON HUMAN RIGHTS

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are 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 rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

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<sup>8</sup> Report on freedom of assembly and association on the Internet. Committee of experts on cross-border flow of Internet traffic and Internet freedom (MSI-INT). Council of Europe. 2015

<sup>9</sup> Universal Declaration of Human Rights, G.A. Res. 217A, Art. 20, UN Gen. Assem. (10 Dec. 1948), [https://www.ohchr.org/en/udhr/documents/udhr\\_translations/eng.pdf](https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), Art. 21, UN Office of the High Commissioner for Human Rights, (23 Mar. 1976), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

<sup>10</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, art. 11, Eur. Ct. H.R. (1 Jun. 2010), [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf%23page=9](https://www.echr.coe.int/Documents/Convention_ENG.pdf%23page=9)

## ARTICLE 12, CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests. 2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Although these provisions of international human rights law do not make any reference to the Internet or to any other medium, they provide the proper framework to guarantee the right to freedom of peaceful assembly and association for everyone. There is now a broad understanding and well-established international position that the right to freedom of peaceful assembly and association applies equally online as offline.<sup>11</sup>

There is an ever-increasing number of recommendations, resolutions, declarations and reports both at the United Nations and at the Council of Europe (CoE) level that stress the importance of new technologies for their exercise. The important role of new information and communication technologies in enabling and facilitating the enjoyment of the right to freedom of assembly has been reiterated with:

*Resolutions 21/162<sup>12</sup> and 24/53<sup>13</sup> of the Human Rights Council on “The rights to freedom of peaceful assembly and of association”*

They further describe the need for all States to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries.

The Committee of Ministers of the Council of Europe has also taken a similar position. Its Recommendation to member states on a Guide to human rights for Internet users devotes an entire section to assembly, association and participation.<sup>14</sup> In one part they stipulate that internet users ‘have the right to peacefully assemble and associate with others using the Internet.’ It further explains that in practice, this means that internet users have ‘the freedom to choose any website, application or other service in order to form, join, mobilize and participate in social groups and assemblies whether or not they are formally recognized by public authorities’ and that internet users ‘have the right to protest peacefully online’.

The United Nations (UN) Human Rights Council emphasized in two successive resolutions in 2012 and 2013, the obligation of States ‘to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline.’ In 2014, the UN Human Rights Council’s Resolution on the promotion, protection and enjoyment of human rights on the internet further noted that: ‘the same rights that people have offline must also be protected online.’ Similarly, in their joint report in 2016, the UN Special Rapporteurs on freedom of assembly and of association, and on extrajudicial, summary or arbitrary executions, stated that ‘it has been recognized that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online.’

Furthermore, the 2018 Resolution of the UN General Assembly calls ‘upon all States to ensure that the same rights that individuals have offline, including the rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in accordance with human rights law’. Similarly, a 2019 report by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association argues that ‘the freedom to access and use digital technologies for the exercise of peaceful assembly and association rights should be

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<sup>11</sup> In his 2012 Report (A/HRC/20/27), the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, called upon States “to recognize that the rights to freedom of peaceful assembly and of association can be exercised through new technologies, including through the Internet”.

<sup>12</sup> A/HRC/RES/21/16

<sup>13</sup> A/HRC/RES/24/5

<sup>14</sup> CM/Rec(2014)6.

*viewed as the rule, and the limitations as the exception*'. And while the report highlighted a number of opportunities the new technologies offered to those exercising their rights, it also acknowledged that their emergence has also created a number of challenges, particularly in relation to the responsibilities of both states and businesses and to the limits of legitimate interference.

The most significant contribution on the right of peaceful assembly in online spaces in the recent period was made with **The General Comment 37 on Article 21**<sup>15</sup> which provides an authoritative interpretation of the protection of Article 21 (Right to Peaceful Assembly) of the International Covenant on Civil and Political Rights (ICCPR), and clarifies that the Covenant protects peaceful assemblies wherever they take place, either in physical spaces or online, or even a combination of both.

On July 27, 2020, after over a year of discussions and continued consultations, the UN Human Rights Committee – a body of independent experts entrusted with interpreting the rights protected by the International Covenant on Civil and Political Rights (ICCPR) – issued authoritative guidance on the right of peaceful assembly: General Comment No. 37 on Article 21 of the ICCPR. The General Comment is the Committee's first comprehensive guidance on the right of peaceful assembly.

**SCOPE OF THE RIGHT OF PEACEFUL ASSEMBLY according to the General Comment 37** The right of peaceful assembly protects nonviolent gatherings that take place in public or private places, as well as online gatherings, such as those on Twitter and Facebook. The right extends to civil disobedience and direct-action campaigns. And the right may be exercised by both citizens and non-citizens, including undocumented migrants, refugees, and stateless persons.

This General Comment was welcomed and necessary update since the nature of assemblies has undergone substantial change since the inception of the ICCPR, particularly regarding the use of digital technologies worldwide. The General Comment therefore plays a significant role in advising state parties and other stakeholders on the right to peaceful assembly in online spaces.

General Comment 37 sets out progressive principles and standards on a broad range of issues relating to the right of peaceful assembly and the ability to engage in protests, meetings, and other gatherings. The General Comment does not automatically change the legal frameworks governing peaceful assemblies at the national or local level. However, it can empower civil society to advance the full respect and facilitation of this right through advocacy, awareness-raising, and training efforts at the local, national, and regional levels.<sup>16</sup> In other words, the protection of the right to peaceful assembly also extends to remote participation in, and organization of, assemblies, including online only. Therefore, associated activities that happen online or otherwise rely on digital services are also protected under Article 21, ICCPR. The GC acknowledges that emerging communications offers the opportunity to assemble either wholly or partly online and often play an integral role in organizing, participating in and monitoring physical gatherings.

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<sup>15</sup> General Comment No. 37 on Article 21 - on Right of peaceful assembly (CCPR/C/GC/37) <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>

<sup>16</sup> GENERAL COMMENT 37: A SHORT GUIDE FOR CIVIL SOCIETY. ICNL, 2020

States have a positive obligation to facilitate and protect the exercise of the right to freedom of peaceful assembly. This duty should be reflected in both, the legislative framework and law enforcement regulations and practices. It includes a duty to facilitate assemblies at the organizer's preferred location and within 'sight and sound' of the intended audience, also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded. The duty to protect also involves the protection of assembly organizers and participants from third party individuals or groups who seek to undermine their right to freedom of peaceful assembly.<sup>17</sup> It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom of assembly is practically enjoyed and not subject to undue bureaucratic regulation.

**The U.N. Human Rights Council has declared that the same rights that people have offline must also be protected online.**<sup>18</sup> The U.N. General Assembly has also called upon all States to "ensure that the same rights that individuals have offline, including the rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in accordance with human rights law"<sup>19</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association in Human Rights Council has recognized that digital technology is integral to the exercise of the rights of peaceful assembly and association.<sup>20</sup> Technology serves both as a means to facilitate the exercise of the rights of assembly and association offline, and as virtual spaces where the rights themselves can be actively exercised.<sup>21</sup> Indeed, such technologies are important tools for organizers who seek to mobilize a large group of people in a prompt and effective manner, and at little cost, and also serve as online spaces for groups of people that are marginalized by society and are confronted with restrictions when operating in physical spaces.<sup>22</sup> **The Special Rapporteur has called upon States to ensure that everyone can access and use the Internet to exercise these rights, and that online associations<sup>23</sup> and assemblies<sup>24</sup> are facilitated in accordance with international human rights standards.** The Human Rights Council has recognized that although an assembly has generally been understood as a physical gathering of people, human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online.<sup>25</sup>

While these rights are not absolute, the freedom to access and use digital technologies for the exercise of peaceful assembly and association rights should be viewed as the rule, and the limitations as the exception.<sup>26</sup> The general norm should be to permit the open and free use of the Internet and other digital tools. Resolution 15/21 of the Human Rights Council makes it clear that to be permissible restrictions should be "prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others".<sup>27</sup> Where

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<sup>17</sup> GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY (3rd EDITION). CDL-AD(2019)017. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

<sup>18</sup> See Human Rights Council resolution 38/7

<sup>19</sup> See General Assembly resolution 73/173.

<sup>20</sup> See A/HRC/20/27 and A/HRC/38/34.

<sup>21</sup> A/HRC/29/25/Add.1, para. 53.

<sup>22</sup> See A/HRC/35/28.

<sup>23</sup> A/HRC/20/27, para. 52

<sup>24</sup> A/HRC/29/25/Add.1, para. 34

<sup>25</sup> See Human Rights Council resolution 38/11.

<sup>26</sup> A/HRC/23/39, para. 76.

<sup>27</sup> See Human Rights Council resolution 15/21.

such restrictions are made, “States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.”<sup>28</sup>.

States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards. This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2 (1) of the International Covenant on Civil and Political Rights).<sup>29</sup>

**In the digital age, the positive obligation to facilitate the exercise of the rights to freedom of peaceful assembly and of association includes efforts “to bridge the digital divides, including the gender digital divide, and to enhance the use of information and communications technology, in order to promote the full enjoyment of human rights for all”.<sup>30</sup> The obligation to protect requires that positive measures be taken to prevent actions by non-State actors, including businesses that could unduly interfere with the rights to freedom of peaceful assembly and of association.<sup>31</sup>**

Where peaceful assembly and association rights are unduly restricted, the victim(s) should be able to exercise their rights to an effective remedy and obtain redress. The Human Rights Council has called on States to “ensure effective remedies for human rights violations, including those related to the Internet, in accordance with their international obligations”.<sup>32</sup> Violations of the rights of peaceful assembly and association may also interfere with the enjoyment of other human rights, both offline and online. These include the right to privacy and the right to freedom of opinion and expression, which are intimately related to the enjoyment of peaceful assembly and association rights. Other rights may also be affected, particularly economic, social and cultural rights.<sup>33</sup>

**Overall, states should create a legal framework that is conducive to individuals exercising their right to participate in online assemblies, from access to the internet to data protection and from the facilitation of electronic means of participation to appropriate oversight of surveillance measures.**

States must respect, ensure and facilitate the exercise of peaceful assemblies as well protect their participants without discrimination (GC, para 8). When authorities impose restrictions, these must be clearly established by law and must also be both necessary in a democratic society as well as proportionate to the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others (Article 21, ICCPR and GC, para 36).

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<sup>28</sup> Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 6.

<sup>29</sup> A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1. Article 26 of the Covenant.

<sup>30</sup> Human Rights Council resolution 38/7, para. 5. This is also reflected in the 2030 Agenda for Sustainable Development, which contains a commitment to “significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020” (target 9.C) and to “enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women” (target 5.B). See also A/HRC/35/9.

<sup>31</sup> See article 2 (2) of the Covenant; and Human Rights Committee, general comment No. 31.

<sup>32</sup> See Human Rights Council resolution 38/7.

<sup>33</sup> A/HRC/41/41

These obligations extend to digitally-mediated assemblies, as well. In particular:

- ➡ States must not, block or hinder Internet connectivity or access to content in relation to peaceful assemblies (GC, para 34);
- ➡ States should ensure that the activities of Internet service providers and intermediaries do not unduly restrict assemblies or the right to privacy of their participants (GC, para 34);
- ➡ The collection, retention and sharing of personal information and data of those engaged in peaceful assemblies, including via monitoring of social media to glean information about participation in peaceful assemblies, must always be subject to independent and transparent scrutiny and oversight as it may violate their right to privacy (Article 17, ICCPR and GC, para 62).

## IV ROLE AND RESPONSIBILITIES OF THE BUSINESSES IN RESPECTING PEACEFUL ASSEMBLY

States parties hold the primary responsibility for the realization of the right of peaceful assembly. However, business enterprises have a responsibility to respect human rights, including the right of peaceful assembly of, for example, communities affected by their activities and of their employees. Private entities and broader society may be expected to accept some level of disruption as a result of the exercise of the right. Assemblies and associations, and the response they garner, draw attention to the need for state accountability, as well as the accountability of other powerful actors, such as corporations, who heavily influence society and impact fundamental rights and who, under the international human rights framework, are called on to respect human rights.<sup>34</sup>

**In the digital age, the exercise of the rights of peaceful assembly and association has become largely dependent on business enterprises, whose legal obligations, policies, technical standards, financial models and algorithms can affect these freedoms.** Online platforms and social media companies, in particular, wield significant power over how both the right to freedom of peaceful assembly and the right to freedom of association are enjoyed and exercised, particularly in countries where the “offline” exercise of the rights to freedom of peaceful assembly and of association is heavily curtailed. These platforms, however, have also become new tools for targeting and surveilling civil society actors.

The global framework for assessing digital technology companies’ responsibilities to respect human rights is provided by the Guiding Principles on Business and Human Rights<sup>35</sup>. Guiding principles 11–24 recognize that business “should respect human rights” by avoiding infringing on the human rights of others and by addressing adverse human rights impacts with which they are involved. In order to fulfil this obligation, business enterprises should have in place human rights policies and processes – including a policy commitment to meet their responsibility to respect human rights; a human rights due diligence process to identify, prevent, mitigate, and account for how they address their human rights impacts; and processes to enable the remediation<sup>36</sup> of any adverse human rights impacts that they cause or to which they contribute.

In this regard, the views of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, are that: “human rights law gives companies the tools to articulate and develop policies and processes that respect democratic norms and counter authoritarian demands”.<sup>37</sup> Similarly, the Human Rights Council has recognized that “international human rights law should guide private sector actors and be the basis for their policies”.<sup>38</sup>

States, for their part, also have obligations to protect human rights and prevent violations in relation to the actions or inaction of third parties such as businesses. Guiding principle 1 affirms that “*States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This*

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<sup>34</sup> OHCHR, Guiding Principles on Business and Human Rights, HR/PUB/11/04 (16 June 2011).

[https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>35</sup> OHCHR, Guiding Principles on Business and Human Rights, HR/PUB/11/04.

<sup>36</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprise. A/72/162, para. 86 (c).

<sup>37</sup> A/HRC/38/35.

<sup>38</sup> Human Rights Council resolution 38/7.

*requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>39</sup>*

It is important to study how States may protect the freedom of assembly and association online, since the measures could be very different from those when they happen in the physical world. But, it is also necessary to identify the roles and responsibilities of private companies. The UN Guiding principles on business and human rights state that “Business enterprises should respect human rights”. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.” In this case it means that these entities have to consider what results their actions will have in rights like freedom of expression, association or peaceful assembly.<sup>40</sup>

Companies should not comply with measures imposed by states that are not consistent with Articles 19, 21 and 22 of the ICCPR or other international standards regarding freedom of association and assembly. However, it is observed that under increasing pressure, companies are not only complying with state laws concerning user activity regulation and other measures imposed by government, but they appear to also take pre-emptive measures through, for example, adaptations to their terms of service agreements.<sup>41</sup> The challenges presented by companies regulating user activities and freedom of association and assembly online stem from: the lack of their policy standards being rooted in international human rights law; government pressure and vague national laws; extraterritorial requests by states to take down content or shut down online activities; extralegal requests by states that cannot be sufficiently addressed; placing extreme pressure on companies to address disinformation; lack of sufficient information for users reporting or users against whom action is taken; automation and over-blocking; hate speech and targeting of vulnerable groups; and insistence on “real name” policy.<sup>42</sup> In this regard, the recommendations made in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression addressing content moderation and responsibilities of companies<sup>43</sup> can be of use when developing recommendations with regard to their responsibilities related to freedom of association and assembly online.

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<sup>39</sup> A/HRC/17/31

<sup>40</sup> The ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights, written by Shift and the Institute for Human Rights and Business and funded by the European Commission singles as an example of a possible impact in the rights of users and consumers “Government demands URL filtering and blocking systems at the national network gateway for purposes that are not in line with international human rights law (e.g. enable censorship and limit peaceful public gatherings by human right defenders).”

<sup>41</sup> The rights to freedom of peaceful assembly and of association in the digital age: Submission to the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association by the Association for Progressive Communications (APC). January, 2019.

<sup>42</sup> APC. (2018).

<sup>43</sup> A/HRC/38/35

The internet, particularly social media, and other ICTs have facilitated the enjoyment of the rights to freedom of peaceful assembly and of association both on and offline. According to the Association for Progressive Communications (APC), association online “refers to the act of forming groups, including informal ones, online, with or without moderators or group leaders.” Similarly, peaceful assembly online refers to “an intentional and temporary gathering in a private or public space for a specific purpose that includes the acts of coordinating, organizing, gathering, planning, or meeting on platforms available online such as instant messaging, voice over internet protocol, chat applications, email groups, and mailing lists, among others.”<sup>44</sup>

Various online techniques and tools are used to further enable the rights to freedom of peaceful assembly and of association online.<sup>45</sup> In 2019, the U.N. Special Rapporteur on freedom of assembly and association, Clément Voule, released a timely report on the exercise of the rights to freedom of peaceful assembly and of association in the digital age to the U.N. Human Rights Council. In his report, Voule addressed the intersection of digital technologies and peaceful assembly and association, noting worldwide examples that “demonstrate the power of digital technology in the hands of people looking to come together to advance democracy, peace, and development.”<sup>46</sup> For instance, hashtags are commonly used to share information, mobilize individuals, and gather worldwide support. End-to-end encryption technologies, pseudonyms, and other digital security features empower individuals to operate in a safe digital space to connect and mobilize without undue interference. Finally, petitions and crowdfunding platforms are circulated through social media to reach new audiences, enable greater participation, and spread information worldwide.<sup>47</sup> Take, for instance, young people’s efforts worldwide to use social media platforms, such as TikTok, to mobilize against injustice.

Access to the internet and digital technologies is therefore key to repurposing digital tools for unique and creative modes of protest and organizing. Overall, these online mobilization efforts highlight the momentum such activism and associations have built by utilize digital tools to advance the exercise of peaceful assembly and association in the digital age.

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### THE INTERNET AS A TOOL FOR ASSEMBLY AND ASSOCIATION

There are currently around 4.66 billion active internet users worldwide.<sup>48</sup> Almost 90% of households in EU has access to internet.<sup>49</sup> The Internet has become the public sphere of the 21st century, making ICTs an essential tool for assembly and association. Because of its main characteristics (namely world-wide reach, low-cost barriers to infrastructure entry and speed of communication), the Internet offers advantages to those who wish

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<sup>44</sup> Venkiteswaran, G. (2016) Association for Progressive Communications (APC). Freedom of assembly and association online in India, Malaysia and Pakistan: Trends, challenges and recommendations. [https://www.apc.org/sites/default/files/FOAA\\_online\\_IndiaMalaysiaPakistan.pdf](https://www.apc.org/sites/default/files/FOAA_online_IndiaMalaysiaPakistan.pdf) , page 13.

<sup>45</sup> U.N. Human Rights Council, Res. 21/16, The rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/RES/21/16 (11 October 2012). <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/63/PDF/G1217463.pdf?OpenElement>

<sup>46</sup> U.N. Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Voule U.N. Doc. A/HRC/41/41 (17 May 2019). <https://undocs.org/A/HRC/41/41>

<sup>47</sup> Ibid., paragraphs 22-25, 43.

<sup>48</sup> <https://www.statista.com/statistics/617136/digital-population-worldwide/>

<sup>49</sup> Measuring digital development: Facts and figures 2020 [https://www.itu.int/en/ITU\\_D/Statistics/Pages/facts/default.aspx](https://www.itu.int/en/ITU_D/Statistics/Pages/facts/default.aspx)

to use it as tool for assembly and association.<sup>50</sup> Practically, a demonstration can be convened in a matter of hours without actually having to meet the other organizers (if they exist) because all the communications can take place online. In particular, social media offer opportunities for gathering support and for publicity.

The case of Oscar Morales, a Colombian who started a Facebook group called “Un millón de voces contra las FARC” (One million voices against FARC), is an interesting example. Although the initial intention of Morales was not to organize a physical demonstration, the support that this Facebook group received and the demands expressed their led to demonstrations being organized in different cities with more than 10 million attendants in Colombia and 2 million abroad, just one month after the creation of the Facebook group. In the words of David Kirkpatrick in his book “The Facebook Effect: The Inside Story of the Company That Is Connecting the World” (Simon and Schuster, 2011, p. 4): “*The movement that began with an impassionate midnight Facebook post in one frustrated young man's bedroom led to one of the largest demonstrations ever, anywhere in the world.*”<sup>51</sup>

During and after a demonstration, the Internet can be used for several purposes: to publicise it (especially when it does not receive enough coverage from traditional media), to denounce the excessive use of force by the police, to share up-to-date information (for example, where to find medical help in case of violent outbreaks), to express support by the people who cannot be physically present, to ask for or offer help, to communicate with family and friends and others. The Internet is also a useful tool for associating purposes- it helps to plan activities and connect people and provides international outreach.<sup>52</sup>

The importance of the Internet to get people's support for a goal can be showcased in the European Citizen's Initiative, which allows EU citizens to participate directly in the development of EU policies, by calling on the European Commission to make a legislative proposal. This mechanism has a very strong digital component, first because the organizers have to register their initiative on a website where everyone will be able to consult basic information about it. Secondly, the threshold for the required statements of support can be reached by collecting them online.

Petitions can also be channeled through private platforms; one of the most popular is Change.org. The aim of this online petition platform is to facilitate the mobilization of citizens for different political initiatives and organizing advocacy campaigns, connecting people to decision makers. There are more than 265 million Change.org users in 196 countries. The Internet is a good platform for coming together to contribute to a common goal. This is the reason why, in recent years, “crowdsourcing” has become very popular. This concept can be defined as a collaborative endeavor in which a call for ideas or content is made to a large number of people, it does not always need to be online, but in using the Internet as its principal conduit, the practice becomes easier and acquires an expanded potentiality.

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<sup>50</sup> In addition, according to a Study of the Pew Research Center on the “The social side of the Internet” done in 2011, Internet users are more prone to associate in general. The study “found that 75% of all American adults are active in some kind of voluntary group or organization and internet users are more likely than others to be active: 80% of internet users participate in groups, compared with 56% of non-internet users. And social media users are even more likely to be active: 82% of social network users and 85% of Twitter users are group participants.”

<sup>51</sup> Report on freedom of assembly and association on the Internet. Committee of experts on cross-border flow of Internet traffic and Internet freedom (MSI-INT). Council of Europe. 2015

<sup>52</sup> One example is the “Let's do it!” Project, “a civic led mass movement” which started in Estonia as an initiative to clean part of the waste of the country and create awareness of the environmental problems. They decided to organise a National Clean-up Day, which proved so successful that the Project developed into an international movement, with 112 countries working together, 11 million participants, and the annual organization of a World Cleanup day. The Internet contributed significantly to the success of the project by offering more possibilities to advertise and organise it worldwide. <http://www.letsdoitworld.org/>

In addition to facilitating people's assembly and association in the physical world, the Internet can itself be envisaged as the space in which associations or assemblies take place. In this case assemblies and associations would be considered as entirely digital. In the CoE Guide to human rights of Internet users, the Internet is considered both as a tool and a space in which one may exercise the right to freedom of peaceful assembly and association. *The creation of online communities also illustrates the idea of envisaging the Internet as a space for assembly and association. The Internet can be envisaged also as a space for protests.*

Given the ways in which Internet-based technologies can serve as enablers for the exercise of human rights in the context of assemblies, it is crucial that States close the digital divide<sup>53</sup> and secure Internet access for their population.<sup>54</sup> The Human Rights Council<sup>55</sup> and the General Assembly<sup>56</sup> have recognized the role of the Internet as a driving force in accelerating progress towards development. Sustainable Development Goal 9 of the 2030 Agenda for Sustainable Development includes a commitment to significantly increase access to information and communications technology and to strive to provide universal and affordable access to the Internet in least developed countries by 2020 (target 9.c).

Freedom of assembly is increasingly facilitated by the Internet, and the potential importance of the internet is that it serves both as a facilitator of physical assembly, and as a venue for assembly within its own right. "Online groups simplify logistics, eliminate the need for bodily presence, and remove the burdens long associated with physical distance and national borders. Instead of being physically present to participate in a protest, one can send an avatar to a virtual site to join a virtual protest. This means of participation removes the risk of bodily harm or arrest and eliminates overhead for transportation, food, water, or shelter."<sup>57</sup>

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## NEW TECHNOLOGIES AS ENABLERS FOR THE EXERCISE OF HUMAN RIGHTS IN CONTEXT OF FREEDOM OF ASSEMBLY

Digital technologies have brought remarkable opportunities for the enjoyment of the rights of freedom of peaceful assembly and of association. By serving both as tools through which these rights can be exercised "offline" and as spaces where individuals can actively form online assemblies and associations, digital technologies have vastly expanded the capacities of individuals and civil society groups to organize and mobilize, to advance human rights and to innovate for social change.

New technologies, in particular ICTs, have a positive, transformative potential. These technologies enable people to exercise the right of peaceful assembly and related rights through their use: in mobilizing for and organizing peaceful protests, in forming networks and coalitions and in becoming better informed about assemblies and the reasons behind them, thus driving social change. New technologies may also be useful in increasing transparency and accountability for violations and abuses that may occur during protests.

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<sup>53</sup> The term "digital divide" refers to the gap between individuals, households, businesses and geographic areas at different socioeconomic levels with regard to their opportunities to access ICTs and to their use of the Internet for a wide variety of activities (A/HRC/35/9, para. 3).

<sup>54</sup> A/HRC/27/33, para. 22.

<sup>55</sup> Human Rights Council resolution 38/7

<sup>56</sup> General Assembly resolution 73/179

<sup>57</sup> J. Inazu, 'Virtual Assembly,' Cornell Law Review, (2012)

Individuals use ICTs to organize assemblies, as they provide a relatively easy and accessible means of communicating quickly and efficiently, spreading messages to a large audience at a low financial cost. In some instances, social media networks are used to facilitate the coordination of assemblies. The speed with which information travels via new technologies supports the arrangement of spontaneous demonstrations. Messaging and social networking platforms that use encryption technology to prevent monitoring enhance the security of civil society groups' digital communication, while also providing tools specifically geared to network organizing at the grass-roots level.<sup>58</sup> To protect the safety of communications, some messaging platforms have adopted the use of end-to-end encryption. Other examples are smartphone applications that have been developed to help move the protests to key geographic areas in order to maximize their impact, and the creation of automated chatbots by civil society to provide legal aid to protesters facing arrest.

Internet and communication technologies (ICTs) have emerged as powerful tools for social and political change. They are central today to protect diversity and **empower people and groups in positions of marginalization** – such as persons with disabilities, LGBTIQ communities, and linguistic, religious and other minorities – to exercise their right to Freedom of Assembly and Association. As physical civic space is shrinking around the world, online platforms are viewed as the new places for people to associate, gather and demonstrate, where doing so physically is no longer possible. Additionally, mobilization online is also central today for supporting and strengthening offline assemblies. Tools like websites, email groups, WhatsApp groups, mailing lists and social media and other messaging platforms are used to share information, organize protests, issue joint statements, and mobilize citizens across geographic boundaries.<sup>59</sup>

ICTs are effective for mobilization and democratizing participation in public affairs, including among **persons with disabilities** and others who are not in positions to participate in physical assemblies. For people who do not have easy affordable access to transport, who live in remote places, or who have long work hours, ICTs have enabled them to participate in civic spaces which were out of reach previously. People no longer have to travel to the capital to be part of a movement to lower sales tax, or to challenge corruption. Live streaming and other forms of information-sharing online also open up space for people who are not able to participate in physical demonstrations – for example, diaspora communities and people with disabilities. Where the exercise of freedom of assembly and association offline is dangerous, particularly in authoritarian and undemocratic regimes, the ability of people to exercise freedom of assembly and association online comes as a relief.

The exercise of freedom of assembly and association online counteracts the mediation of information by dominant media and circumvents prohibitions on dissemination of information. It impacts significantly on the scope of the action: with the use of the internet, assemblies have a greater reach and are more sustained across borders. They take up greater space and provide the possibility to articulate dissent beyond the gathering.

With regard to association, **the relative anonymity** that the internet facilitates as well as its cross-border nature enable people to develop identities and associate with others in a way that is simply not possible for them offline. For those who face social stigma or whose very identity is criminalised – such as people who face discrimination based on their sexual orientation and gender identity, religious or ethnic minorities, and political dissidents – the internet can be a lifeline to form meaningful associations.

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<sup>58</sup> A/HRC/41/41, para. 26.

<sup>59</sup> The rights to freedom of peaceful assembly and of association in the digital age: Submission to the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. APC. January 2019.

Encryption technologies, pseudonymity and other security features have enabled individuals belonging to minority groups to find one another and create community. The Human Rights Council has stressed that “technical solutions to secure and protect the confidentiality of digital communications, including measures for encryption and anonymity, can be important to ensure the enjoyment of human rights, in particular the rights to privacy, to freedom of expression and to freedom of peaceful assembly and association”.<sup>60</sup> The Special Rapporteur asserts that the same is true for the organization and conduct of associations. These tools provide individuals and civil society actors with safe online space to gather and connect with other members of their group as well as to organize and coordinate activities, without undue interference from third parties and government.<sup>61</sup>

**Technology can also increase transparency and accountability for violations and abuses that may occur during protests.** ICT enables the live streaming of assemblies through social media and the documentation of human rights violations through the use of smartphone cameras and other recording devices. This is particularly important when the media is unwilling or unable to cover certain protests.<sup>62</sup>

**States also use ICT to facilitate the management of assemblies.** For example, the guidelines on demonstrations developed by the municipality of Amsterdam advise local authorities to consult social media before a demonstration to help estimate the number of potential participants and to use social media to communicate with demonstrators. Other authorities use social media to coordinate efforts and exchange information with organizers, in particular during large-scale assemblies.<sup>63</sup>

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## OPPORTUNITIES AND EXAMPLES

**The role of social media in mobilizing people** to the streets is well known. The #BlackLivesMatter movement for racial equality began with the use of a hashtag to mobilize communities in mass protests in the United States and other parts of the world against police violence and systemic racism towards people of African descent. Many youth movements across the world are supported by social media, as demonstrated by the #RoadSafetyMovement in Bangladesh, the #FeesMustFall campaign in South Africa, and the #FridaysForFuture and #ClimateStrikes global movement.

**Individuals can now use online spaces to participate in a virtually connected civil society.** Women activists, for example, use the Internet to connect and to exchange strategies, including across borders, and as a space for organizing. The #MeToo movement is perhaps the most notable recent example. In 2017, survivors of sexual violence used social media platforms to share personal stories of sexual harassment and abuse and to call for gender equality in the workplace, under the hashtag #MeToo. Within a year, the hashtag had reportedly been used more than 19 million times both by survivors and by supporters of the cause. Although the movement began in the United States, women in France (#BalanceTonPorc), in the Arab world (#AnaKaman), in India (#MeTooIndia), in Ukraine (#IAmNotAfraidToSayIt) and in Mexico (#MeTooMexico) also joined.

**Through the use of social media, e-petitions and crowdfunding platforms, civil society organizations have been able to reach new audiences, spread information, attract members and find funding in ways**

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<sup>60</sup> See Human Rights Council resolution 38/7.

<sup>61</sup> See A/HRC/29/32 and A/HRC/38/35/Add.5.

<sup>62</sup> A/HRC/44/24

<sup>63</sup> A/HRC/44/24

**that were previously impossible or extremely costly.** For example, following the earthquake in Mexico in 2018, a group of citizens mobilized online via #Verificado19S28 to provide reliable information and assist victims with needed resources. In Turkey, organizations such as Oy ve Ötesi used social media tools to enlist over 60,000 volunteers to monitor more than 130,000 ballot boxes during the general elections of November 2015. **Similarly, digital technologies have become increasingly important for labour unions to perform their core functions, including organizing protests, keeping in touch with members and providing spaces for discussion and decision-making.**<sup>64</sup>

**Many civil society groups have taken advantage of technology to innovate in addressing social problems.** For example, The Eyewitness project has developed technologies to enhance the capacity of civil society actors and individuals to document and record human rights abuses.<sup>65</sup> The development of open source software and free commons has been largely driven by civil society organizations such as the Mozilla Foundation and Wikimedia. Platforms such as Signal and Crabgrass have been developed to enhance security of civil society groups' digital communications. Community networks in refugee settlements or in indigenous communities are another example of civil society innovation to address social problems.

**Digital technologies should be seen by the authorities “as an excellent opportunity to interact with a large and diversified audience prior to and during peaceful assemblies,** with a view to sensitizing them on their role and functions, and ultimately building or reinforcing trust among the population”.<sup>66</sup> Likewise, States should recognize the value of technology to facilitate people's rights to public participation. The Special Rapporteur welcomes **efforts by many governments to establish online platforms through which those interested can submit and collect signatures for petitions on government policies and legislative action.**

These examples demonstrate only some, yet remarkable range of uses of digital technology for the enjoyment of the rights of peaceful assembly and association, and the interplay between offline and online spheres. The Special Rapporteur observes that the rights of freedom of peaceful assembly and of association are often seamlessly exercised online and offline. For example, many associations have offices and people meet face-to-face. At the same time, they use digital technology to carry out daily activities and as a space to convene online discussions and assemblies. Similarly, associations primarily based online can also hold in-person discussions and assemblies. The extent of the online and offline activities depends on the association's membership, strategies and goals. Simply stated, international law protects the rights of freedom of peaceful assembly and of association, whether exercised in person, or through the technologies of today, or through technologies that will be invented in the future.<sup>67</sup>

But, despite its positive, transformative potential, the use of ICT has also enabled dangerous and hateful speech against certain racial<sup>68</sup> and religious groups, as well as gender-based discrimination, attacks and violence, including violence against women and girls.<sup>69</sup> This often reflects and may exacerbate harmful racial and gender-based stereotypes, discrimination and violence offline. Online violence against certain racial and religious minorities and women and girls has risen sharply over the past few years, and can result in women limiting their

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<sup>64</sup> Jeffrey M. Hirsch, “Worker collective action in the digital age”, *West Virginia Law Review*, vol. 117 (2015), pp. 921–959; and Klaus Schoemann, “Digital technology to support the trade union movement”, *Open Journal of Social Sciences*, vol. 6, No. 1 (2018), pp. 67–82.

<sup>65</sup> See [www.eyewitnessproject.org](http://www.eyewitnessproject.org).

<sup>66</sup> A/HRC/23/39, para. 74.

<sup>67</sup> Douglas Rutzen and Jacob Zenn, “Assembly and association in the digital age”, *International Journal of Not-for-Profit Law*, vol. 13, issue 4 (December 2011), p. 67.

<sup>68</sup> A/HRC/26/49, para. 18.

<sup>69</sup> A/HRC/32/42, para. 70.

participation on online platforms<sup>70</sup>. This is particularly true in cases where assemblies are organized by civil rights and racial equality activists and women and girls. Online violence and abuse against racial and religious minorities and women and girls has led many to self-censor or limit their online interactions, restricting them from exercising their rights, including their right to freedom of peaceful assembly.<sup>71</sup> The racial and gender-specificities and scope for ICT to be used to intimidate, threaten and harm women and girls, including offline, requires careful and deeper reflection as well as tailor-made responsive action.

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## LIMITATIONS ON AND RESTRICTIONS TO ASSEMBLY AND ASSOCIATION ONLINE

The rights to freedom of assembly and association in the digital sphere are increasingly the subject of restrictive laws and policies. Threats to freedom of assembly and association online come from both state and non-state actors, such as the private sector and other internet users, and disproportionately impact politically vocal individuals, those who face discrimination based on their gender, gender identity or expression, and minorities including those holding minority views among majority communities.

Interference with access to and the availability and use of new technologies in the context of peaceful protests poses multiple human rights challenges. Such interference includes the filtering of content related to protests, the blocking of websites or certain platforms used to mobilize protesters, the closure of accounts belonging to activists or organizers, or the shutdown of the Internet and communications networks. The Human Rights Council has repeatedly expressed concern about measures to prevent or disrupt access to, or dissemination of, information online in violation of international human rights law. The Council has unequivocally condemned such measures, and it has called upon all States to refrain from adopting them and to bring them to an end.<sup>72</sup>

In the Report<sup>73</sup> submitted to the HRC, The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule expressed concern about the variety of measures and tactics that are used by States to control and impede access to and use of digital technology for the exercise of the rights to freedom of assembly and of association. Laws that criminalize online content continue to proliferate, leading to a significant chilling effect on advocacy and mobilization. Numerous jurisdictions have resorted to shutting down access to communications networks and services during elections and public demonstrations, and blocking websites belonging to civil society groups, including human rights organizations. Demonstrating a sophisticated grasp of emerging technical tools, some States – and malicious third-party actors – have increased use of digital surveillance and online harassment against civil society actors, human rights defenders, opposition political leaders and those who plan to stage peaceful public assemblies. All of this has significantly reduced the space in which people can defend and promote shared interests. Notably, the Human Rights Council has expressed concern about “the emerging trend of disinformation and of undue restrictions preventing Internet users from having access to or disseminating information at key political moments, with an impact on the ability to organize and conduct assemblies”.<sup>74</sup>

Some of the biggest challenges to freedom of assembly online include:

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<sup>70</sup> A/HRC/35/9, para. 35, and A/HRC/38/47, para. 25.

<sup>71</sup> NEW TECHNOLOGIES AND THEIR IMPACT ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF ASSEMBLIES. SUBMISSION TO THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OCTOBER 2019)

<sup>72</sup> Human Rights Council resolutions 32/13, 38/7 and 38/11.

<sup>73</sup> HRC/41/41

<sup>74</sup> See Human Rights Council resolution 38/11.

- ➡ **Access to ICTs and digital divides:** There exist multiple digital divides both between and within countries, with disparities in meaningful access to the internet being determined by a number of factors, including age, disabilities, sexualities, gender identities and expressions,<sup>75</sup> socioeconomic locations, political and religious beliefs, ethnic origins, and racial markers. Individuals and groups within society that would benefit most from the internet to exercise freedom of assembly, like those who live in rural areas, or who are marginalized or socially excluded for any number of factors, are also those who are less likely to have meaningful access to it.
- ➡ **Internet shutdowns:** Internet shutdowns, defined as the “*intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information,*” are inconsistent with international human rights law, and disproportionately interfere with freedom of assembly online.<sup>76</sup>
- ➡ **Criminalization and arrests:** Criminalizing the online activities of individuals and organizations constitutes a growing trend in many countries in the world. Individuals are often charged with ill-defined crimes found in antiterrorism, cybercrime and anti-protest laws. While States often invoke national security and public order concerns when pressing these charges, in reality criminal prosecution is too often used to stifle dissent and control the online space, which is not a legitimate government aim and directly infringes articles 21 and 22 of the Covenant. No person should be held criminally, civilly or administratively liable for organizing, advocating, or participating in a peaceful protest<sup>77</sup> or for establishing or operating an association for a lawful purpose. Dissent is a legitimate part of the exercise of peaceful assembly and association rights and should be protected, online and offline.<sup>78</sup>
- ➡ **Takedown and blocking of content:** Blocking of entire websites of human rights organizations and opposition political parties has become increasingly common in many parts of the world. In general, the blocking of entire websites is an extreme, disproportionate measure that severely limits the ability to carry out these activities, and therefore undermines the exercise of freedom of assembly and association. The Special Rapporteur considers that to prohibit an individual or association from publishing material online “solely on the basis that it may be critical of the government or the political social system espoused by the government”<sup>79</sup> is inconsistent with the rights to freedom of peaceful assembly, association and expression.
- ➡ **Surveillance using digital tools:** As the Special Rapporteur noted in her report,<sup>80</sup> the rapid pace of technological development enhances the capacity of states, the private sector and individuals to undertake surveillance, interception and data collection, which may violate or abuse human rights. Unnecessary and disproportionate surveillance measures have increased across the world during the past decade. It should be noted that both mass and targeted surveillance may interfere with freedom of assembly online, especially as human rights defenders (HRDs) and activists are disproportionately impacted by targeted surveillance.

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<sup>75</sup> APC. (2017). Bridging the gender digital divide from a human rights perspective: APC submission to the Office of the High Commissioner for Human Rights. [https://www.apc.org/sites/default/files/APCSubmission\\_OHCHR\\_BridgingGenderDigitalDivideHumanRightsPerspective\\_0.pdf](https://www.apc.org/sites/default/files/APCSubmission_OHCHR_BridgingGenderDigitalDivideHumanRightsPerspective_0.pdf)

<sup>76</sup> The definition comes from the “Keep It On” campaign to fight internet shutdowns: <https://www.accessnow.org/keepiton/#problem>

<sup>77</sup> A/HRC/31/66, para. 27

<sup>78</sup> A/HRC/20/27, para. 84

<sup>79</sup> A/66/290, para. 39.

<sup>80</sup> <https://undocs.org/A/72/135>

- ➡ **Government hacking:** In an effort to obtain data, law enforcement and intelligence agencies engage in attacks on the security of networks and devices. Sometimes these attacks are specifically targeted at associations and NGOs. Attacks can come in the form of state-sponsored malware, which deploys malicious code that infects computers; stockpiling or exploiting vulnerabilities, which leaves the public vulnerable to having their data stolen and exploited; and malicious hacking, whereby agents actively break into computers remotely, and may access, copy, delete or even create data in order to suit their needs.<sup>81</sup> The recent UNGA resolution on the right to privacy in the digital age<sup>82</sup> calls on states to “refrain from employing unlawful or arbitrary surveillance techniques, like hacking.”
- ➡ **Crackdown on encryption:** Tools for secure digital communications such as encryption and similar technologies are essential for the exercise of the rights to freedom of association and peaceful assembly. A number of governments in recent years have been threatening to legislate “backdoors” to encryption, enabling them to access private communications when they believe they have a justification for doing so. Backdoors expose all communications running through them to potential compromise by malevolent actors, including criminals, stalkers and terrorists.
- ➡ **Gender-based violence online, trolling and harassment:** While ICTs have been used widely for the organization of mass gatherings and mobilization, they have also proven to be the medium through which counter-assemblies and trolls engage in cyberbullying, trolling, hijacking of hashtags, harassment, intimidation, doxing and hate speech, which have the impact of impeding the legitimate exercise of assembly. Similarly, persons participating in online assemblies, especially those that touch upon issues relating to religion or politics, are often subjected to hate speech which is observed to be orchestrated in a coordinated fashion.<sup>83</sup> Often times, such harassment has serious offline consequences, as was the case with Sabeen Mahmud who was shot by gunmen for her online activism.<sup>84</sup>
- ➡ **Data-intensive systems** Smart cities, biometric identities and other data-intensive systems are being deployed around the world. In the context of assemblies, including peaceful protests, the use of these systems opens up questions around issues of consent for the collection, processing and use of data, and in particular, how the data may be used to restrict associations and gatherings, in particular for people who are in positions of vulnerability and marginalization. Biometric-based identity systems such as facial recognition software<sup>85</sup> and network triangulation can be used for control over people in public spaces. These technologies used without sufficient checks also make it possible to identify protesters, and reveal information about people’s associations that put their identity and security at risk. In the recent Hong Kong demonstrations, concerns regarding the collection and transfer of biometric data of residents who have participated in the protests by authorities were raised.<sup>86</sup>

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<sup>81</sup> <https://www.eff.org/issues/government-hacking-digital-security>

<sup>82</sup> 84A/RES/73/179

<sup>83</sup> Venkiteswaran, G. (2017). Op. cit.

<sup>84</sup> Hashim, A. (2015, 25 April). Pakistani rights activist Sabeen Mahmud shot dead. Al Jazeera. <https://www.aljazeera.com/news/2015/04/pakistani-rights-activist-sabeen-mahmud-killed-150424210251526.html>

<sup>85</sup> This technology has been banned, for instance, in San Francisco.

See: <https://www.nytimes.com/2019/05/14/us/facial-recognition-ban-san-francisco.html>

<sup>86</sup> Kuo, L. (2019, June 14). Hong Kong’s digital battle: tech that helped protesters now used against them. The Guardian. <https://www.theguardian.com/world/2019/jun/14/hong-kongs-digital-battle-technology-thathelpedprotesters-now-used-against-them>

Freedom of peaceful assembly is guaranteed by the Constitution of North Macedonia: “The citizens have the right to gather peacefully and to express public protest without prior announcement and special approval. The exercise of this right may be restricted only during states of war and emergency.” Constitutional provisions, however, cannot provide for specific details or procedures. Consequently, the Law on Public Gatherings is dealing with public assemblies in addition to constitutional guarantees. Additional laws that cover some of the issues related to the right to assembly in North Macedonia are: the Criminal Code, the Law on Labor Relations, the Law on Police, the Law on Misdemeanors against the Public Order and the Law on Defense.

In the Republic of North Macedonia, the interception of communications and retention of so-called metadata<sup>87</sup> is regulated by the Law on Interception of Communications, the Law on Criminal Procedure and the Law on Electronic Communications.

The provision on interception of communications was formerly part of the provisions in Law on Electronic Communications. But in 2018, a special law was adopted - the Law on Interception of Communications.<sup>88</sup> Interception of communications means secret acknowledging of the content of any communication and at the same time creating a technical recording of the content of the communication, with a possibility to copy it. Hence, it means monitoring the communications on social networks through the already existing platforms (Viber, Facebook, WhatsApp, Skype) but does not cover the insight into the meta data from the conducted interception of communications.

According to the Law on Criminal Procedure, special investigative measures (PIM) are imposed by the competent public prosecutor in those cases when it is likely that data and evidence necessary for successful conduct of the criminal procedure will be provided, which otherwise cannot be collected. One of the legally stated 12 special investigative measures is- insight into realized telephone and other electronic communications that is done through the Internet, with the help of special forensic computer programs (remote forensic software). In this way, all telephone conversations conducted over the Internet can be inspected, as well as all forms of electronic communications (e-mail communication, Facebook chat, etc.). To issue an order for implementation of this special investigative measure, the public prosecutor may submit a request to the public communications operators who are obliged to process the request.

Furthermore, according to the Law on Electronic Communications, operators are obliged to keep the data on electronic communications created or managed by them in the provision of public electronic, communication networks and/or services in order to enable criminal proceedings or protect the security and defense interests of the Republic of North Macedonia.

Operators are required to retain the following types of data:

- ➡ Data needed to monitor and identify the source of the communication;
- ➡ The data needed to identify the destination of the communication;
- ➡ Data required to identify the date, time and duration of the communication;
- ➡ Data required to identify the type of communication;

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<sup>87</sup> Metadata means data that operators retain under the Law on Electronic Communications

<sup>88</sup> Law on Interception of Communications Official Gazette no.71/2018 of 19.04.2018

- ➡ Data required to identify the communication equipment of the user or that which is considered to be his;
- ➡ Data required to identify the location of mobile communications equipment;

Operators also store data relating to failed call attempts. Operator has no obligation to retain data for calls that have not been established. Operators must not retain data that reveals the content of the communication. The operators are obliged to keep the data for a period of 12 months from the date of the communication. The operators are obliged to keep the data for the current geographical, physical or logical location of the terminal equipment of their subscribers, ie users regardless of their communication activity. Operators retain this data for the last 72 hours. Operators are obliged to keep the data on the electronic communications, created or processed by them in the provision of public electronic communication networks and/or services in order to enable the availability of this data to prevent or detect criminal acts, to conduct criminal proceedings or protect the security and defense interests of the Republic of North Macedonia.<sup>89</sup>

If the operators do not submit the requested data in time, the public prosecutor may request the court to issue a fine. Unlike special investigative measures, this power of the public prosecutor is most often used in the practice of identifying or detecting perpetrators of crimes of theft, more precisely theft of mobile phones. This storage and submission of data by the operators, although it may not enter into the contents of the conversations of the subscriber, i.e. the user of the mobile device, due to the very fact that the person with whom the user has communicated is revealed, is an invasion of privacy.<sup>90</sup>

The Law on Criminal Procedure stipulates special conditions that must be met in order to impose special investigative measures, and as such the criminal offenses for which a prison sentence of at least 4 years is prescribed and criminal offenses that are being prepared, their execution is in progress or have been committed by an organized group, gang or other criminal association are listed there. In spite of the conditions stated, the legislator has envisaged several criminal offences that do not meet the above conditions but for which special investigative measures may be imposed. Additionally, having in mind the subject of protection, a special category of crimes is prescribed - Crimes against the state and crimes against humanity and international law.<sup>91</sup>

In the context of public gatherings, the most common crimes are participation in a crowd which prevents an official person in performing an official action and participation in a crowd which commits a crime. For the first crime, the leader of the crowd is sentenced to imprisonment of 1 to 5 years, while for the second crime, the leader of a crowd is sentenced to imprisonment of 1 to 10 years.<sup>92</sup> Taking into account the formal conditions for these crimes, SIM Measures should be foreseen and pronounced, but on the other hand they are not provided in the list of crimes for which SIM can be pronounced.

In this regard, of particular importance are the Recommendations of the Council of Europe which require the use of special investigative measures only when it comes to serious crimes involving acts of terrorism, but not as in our case in certain additional crimes for which it is a sentence of less than four years is envisaged and which is not committed in a group.<sup>93</sup>

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<sup>89</sup> Law on Electronic Communications

<sup>90</sup> Law on Criminal procedure

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> [Rec 2005\\_10 \(coe.int\)](#)

The Criminal Code of the Republic of North Macedonia contains several criminal offenses, i.e. three criminal offenses related to the organization and conduct of public gatherings. These are crimes against fundamental human rights and freedoms and crimes against public order.

The crime Prevention or disturbance of public assembly provided in Article 155 of the Criminal Code, is a crime committed by a person who by force, serious threat, fraud or in other manner prevents or disturbs calling up and organizing a peaceful public gathering, falls under the crime of Human Rights and Freedoms, or organizing a peaceful public gathering, shall be fined or sentenced to imprisonment of up to one year. If this crime is committed by an official person by abusing his official position or authorization, he shall be sentenced to imprisonment of three months to three years.<sup>94</sup>

*In 2014, on the social network Facebook, a platform called Ajde! was created, whose main goal was to restore the power to make political decisions in the hands of the citizens of the Republic of Macedonia. After creating the platform and providing a larger number of supporters and followers, the platform for civil policy "AJDE", on 14<sup>th</sup> March 2014, submitted a written letter to the Ministry of Interior and announced the organization of a peaceful and non-violent protest and protest march, the movement map of which was also submitted. The above act stated that the protest would start on 15.03.2016 at 18.00 in front of the building of the Government of the Republic of Macedonia, and from there the group of citizens would head to the Parliament of the Republic of Macedonia from where the group would head to the building of the Constitutional Court. The group would stay there until the next day, i.e. until the announcement of the decision of the Constitutional Court. The movement map was submitted as an attachment to the announcement. The organizer expected the presence of about 1000 citizens and promised to provide a policing of at least fifty stewards.*

*After disclosing the intention to organize peaceful and non-violent protests in front of the Constitutional Court of the Republic of Macedonia by the Platform for Civil Policy "AJDE", the first applicant S. J. and the second applicant A. T., on 14.03.2016 in the evening, held a press conference at which in front of the media representatives announced the organization of a protest in front of the plateau of the Constitutional Court of the Republic of Macedonia in order to protect the functioning of the Constitutional Court of the Republic of Macedonia. On 15.03.2016, the second applicant A.T. with the intention to prevent the non-violent public gathering-protest, by a written letter to the Ministry of Interior announced that on 15.03.2016 at 18.00 he would organize a peaceful gathering on the plateau in front of the Constitutional Court of the Republic of Macedonia without stating in the written letter why the gathering was organized. On March 15 in the morning, upon the instructions of the first applicant S. J. and the second applicant A. T. the gathering of citizens in front of the plateau of the Constitutional Court and the installation of a stage and awnings started, which occupied the space where the previously announced gathering of "Ajde" was to take place. The criminal charges refer to S.J. and A.T. who organized a gathering of citizens in front of the plateau of the Constitutional Court in order to prevent the previously announced peaceful protest by the platform for civil policy "AJDE" thus committing the crime "Prevention or disturbance of public gathering" punishable under Article 155 of the Criminal Code of the Republic of Macedonia.*

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<sup>94</sup> Article 155 – Criminal Code of the Republic of North Macedonia

The other two criminal offences, which fall under the Crimes against public order, are Participation in a crowd that prevents an official person in performing an official action provided in Article 384 of the Criminal Code and Participation in a crowd, a crime provided in Article 385 of the Criminal Code. The criminal offence Participation in a crowd that prevents an official person in performing an official action provided in Article 384 of the Criminal Code is committed by a person who participates in a crowd and in joint action prevents or tries to prevent an official person in performing an official action or coerces him in performing an official action, shall be sentenced to imprisonment from three months to three years.

The leader of the crowd shall be sentenced to imprisonment of one to five years. The criminal offense provided for in Article 385 of the Criminal Code - Participation in a crowd which commits a crime is committed by a person who participates in a crowd that by joint action performs violence against people, or damages or destroys property to large extent, shall be fined or sentenced to imprisonment of up to three years. If during the action of the crowd some person is killed or suffered a serious bodily injury or damage to a large extent was caused, the participant in the crowd, shall be sentenced to imprisonment of three months to five years for the participation itself. The leader of the crowd shall be sentenced to imprisonment of one to ten years.<sup>95</sup>

On the other hand, for holding public gatherings with physical presence, the Law on Police provides mechanisms by which police officers have the authority to conduct video surveillance in public places, which means audio and video recording in public places in order to prevent criminal acts or misdemeanors. When the life, health or property of people may be endangered during public gatherings, the police officer is authorized to perform video recording or photographing of the public gathering<sup>96</sup>

The police may publicly announce the intention of performing a video surveillance of public places and gatherings, before starting the activity.<sup>97</sup> The recorded material is kept by the police for six months, after which the material is destroyed, except for the material that is evidence in criminal or misdemeanor procedure, used pursuant to the law. On the other hand, regarding the bylaws related to this issue, only a Rulebook on the types of technical devices to be used for audio and video surveillance by the police is adopted. The rulebook lacks several provisions for more detailed regulation on the manner of performing the video recording of the public gatherings.<sup>98</sup>

Consequently, it is concluded that the police have no obligation to announce that they will perform a video surveillance of the public gatherings. This decision is made based on the free assessment of the police officer on whether to inform the participants about performing video surveillance in the public gathering or not.

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<sup>95</sup> Criminal Code (Official Gazette of Republic of Macedonia no. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017 and 248/2018).

<sup>96</sup> Law on Police ("Official Gazette of the Republic of Macedonia" No. 114/2006, 6/2009, 145/2012, 41/2014, 33/2015, 31/2016, 106/2016, 120/2016, 21/2018 and 64 / 2018). Decision of the Constitutional Court of the Republic of Macedonia no. 211/2006 of 05.11.2008, published in the "Official Gazette of the Republic of Macedonia" no. 148/2008. Law on Internal Affairs ("Official Gazette of the Republic of Macedonia" No. 92/2009).

<sup>97</sup> <https://mvr.gov.mk/Upload/Documents/PRAVILNIK%20ZA%20AUDIO%20I%20VIDEO.pdf>

<sup>98</sup> Rulebook on the types of technical equipment that will be used for audio and video surveillance record by the police, Official Gazette no.28 of 07.03.2017 , <https://mvr.gov.mk/Upload/Documents/PRAVILNIK%20ZA%20AUDIO%20I%20VIDEO.pdf>

*During 2016, protests took place under the name "Colorful Revolution". During this protest, the activists expressed their dissatisfaction by throwing paint on the buildings of state institutions against whose policies and decisions the demands of the participants in the protests were directed. During these protests, the police was calling the participants of these protests to police stations, based on their recognition from videos with the explanation that they committed several crimes and without filing appropriate criminal charges against them. The Ministry of Interior announced that with the help of these videos, the people who participated in the protests and who damaged the above-mentioned buildings will be identified.*

*At the protest of the Colorful Revolution, the citizens noticed a person who filmed both the protest and the participants, but without any identification and prior announcement. The same person filmed the present journalists. The participants in the protest asked the person to identify himself and to find out who he was filming for, who stated that he was filming for private purposes and then will hand over the recordings to foreign media. Later, the Interior Ministry confirmed that the person who filmed this protest and the participants and journalists present is a police officer, a member of the Rapid Deployment Unit and that measures will be taken to find out on whose orders he filmed the protest.*

On the other hand, when it comes to new technologies, our criminal law provides for a range of crimes that can be committed through a computer system. In regards to the right to public gatherings by using new technologies, it is of particular importance to emphasize the incrimination of damage and unauthorized access to a computer system, creating and importing viruses as well as dissemination of racist and xenophobic material through a computer system. These are illegal actions and they are envisaged as criminal acts in the Criminal Code of RNM. The crime of damage and unauthorized access to a computer system as well as creating and importing viruses may restrict an individual from being able to use their device while maintaining their privacy.

The crime of damage and unauthorized access to a computer system criminalizes the actions of deleting, modifying, concealing or in other way making unusable computer data, program or device for maintenance of an information system, or making it difficult to use the computer system, entering without authorization in a foreign computer for the purpose of exploiting its data, intercepting the transfer of non-public computer data to, from and within a particular computer system, including electromagnetic emissions from a computer system that supports such computer data.

Through the use of Internet tools, every individual can freely express their opinion as well as enjoy their freedom of public expression of thought. But freedom of speech is not unlimited. The Criminal Code provides for a crime - Dissemination of racist and xenophobic material through a computer system. In our country, most cases of hate speech are due to ethnicity, political affiliation, sexual orientation and gender identity, sex and gender, etc. When holding associations and public gatherings via the Internet on any social network, the dissemination of racist and xenophobic material must not be practiced, while claiming that the right to public expression of opinion at public gatherings or possibly the right to association using internet technologies is violated.

Speaking of the crimes already provided for in the Criminal Code, it is of particular importance to note that at the end of July 2021, a proposal for amendments to the Criminal Code was submitted to the Parliament. The proposed legal amendments proposed to introduce two new crimes, the first is the crime of Stalking and the second is the crime of Sexual Harassment. Both proposed crimes envisage the illegal actions committed through the Internet and/or other means of electronic communication, and by these illegal actions the essence of the crime shall be fulfilled. The main goal of the proposed legal amendments is to harmonize the Criminal Code with

the ratified Istanbul Convention, for which the government in 2018 adopted the five-year National Action Plan for the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. (2018-2023).

In the Republic of North Macedonia, peaceful assemblies are most often organized and announced by using social networks as platforms through which citizens would be informed in the fastest possible way about the intention and organization of a peaceful assembly. Additionally, the information about the holding of the public assemblies can be spread through the media - web portals by using a statement for calling the citizens up to take part in a peaceful gathering that will be held with physical presence.

At a time when the Internet is becoming a tool for spreading information and through which peaceful gatherings and individuals are organized to exercise a certain right that affects them, for example a government decision, there is still a public opinion that holding a peaceful protest with physical presence will contribute to the visibility of activists and their association in public space, have a greater impact and reach the decision makers in the country, i.e. the Government.

On the other hand, there are individuals who still want to take part in supporting civic activism in order to influence a certain policy or decision made by the Government, but they are afraid to protest with a physical presence due to fear of repression and pressure which could affect their current position, such as pressure from school principals<sup>99</sup> or their superiors in their work place<sup>100</sup>. These individuals use social networks and join the groups created on social networks for civic activism in order to be able to contribute with their participation and influence to the goal for which they are united with other activists and share common views and interests.

In order to avoid all these repressions for holding protests and participation of citizens in protests, avoid their labeling as well as avoid consequences for their participation in protests, organizing and holding public gatherings through social networks leads to an increase in the number of participants without fear of repression. An increase in the use of internet tools was evident with the proclamation of the COVID-19 pandemic worldwide.

The proclamation of the Covid-19 pandemic increased the participation of all individuals on social networks. The curfew itself, the restriction of the movement of the citizens as well as the adopted decree banning the holding of public gatherings, led the citizens to use the Internet to unite and come together to exercise a right, i.e. to influence the decisions made by the Government, which personally affects as individuals.

In the Republic of North Macedonia, there are four ways in which the citizens use the internet for gathering to share their interests, opinions and problems.

- ➔ Creation of groups in the social media platform Facebook
- ➔ Using hashtags in social media platforms such as Facebook or Twitter
- ➔ Creation of events in social media platform Facebook.
- ➔ Creation of online petitions

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<sup>99</sup> <https://a1on.mk/macedonia/video-za-posledicite-ne-vi-garantiram-direktorkata-na-nikola-karev-predupreduva-no-veli-deka-go-poddrzhuva-protestot-na-uchenicite/>

<sup>100</sup> <https://sonk.org.mk/%D0%BD%D0%B8-%D0%BF%D1%80%D0%B8%D1%82%D0%B8%D1%81%D0%BE%D1%86%D0%B8%D1%82%D0%B5-%D0%BD%D0%B8-%D0%B7%D0%B0%D0%BA%D0%B0%D0%BD%D0%B8%D1%82%D0%B5-%D0%BD%D0%B5%D0%BC%D0%B0-%D0%B4%D0%B0-%D0%BD%D0%B5-%D1%81/>

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## CREATION OF GROUPS IN THE SOCIAL MEDIA PLATFORM FACEBOOK

The most used platform for social gathering in creating groups of like-minded people with the purpose to make a difference and have an impact on the decisions made by the Government of the Republic of North Macedonia is the social media platform Facebook. Facebook groups are created as groups in which there are persons whose interests and rights are affected by the decision-making of the Government of the Republic of North Macedonia.

A civil initiative called, "Textbooks and Teaching Must Exist"<sup>101</sup> created a group to bring together people who are against the adoption of the new Law on Textbooks for Primary and Secondary Education, which, inter alia, envisages the digitalization of textbooks. This civil initiative in social media platform Facebook was created on April 22, 2021 and to date has over 80.000,00 members.<sup>102</sup>

The main purpose of creating this group is to unite people who have the same opinion regarding the government's decision to digitize textbooks and to exert pressure on the Government to annul the decision. After creating this initial group, individual groups were created throughout the entire country, i.e. each town created its own group regarding this issue, such as in Negotino<sup>103</sup>, Strumica<sup>104</sup>, Kavadarci<sup>105</sup>, Tetovo<sup>106</sup>, Gostivar<sup>107</sup> Veles<sup>108</sup> etc. The result of the groups created in the social media platform Facebook was organizing and participating in a peaceful protest with physical presence in front of the municipal headquarters, whereas in Skopje in front of the Ministry of Education and Science.<sup>109</sup>

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## USING HASHTAGS IN SOCIAL MEDIA PLATFORMS SUCH AS FACEBOOK OR TWITTER

In addition to creating groups on social networks to bring together activists with the same views on a particular issue which affects them, the use of hashtags is especially important, and it is most widespread on the social networks Facebook and Twitter. Cases that have grown into large-scale activist movements by using hashtags is for example the use of the hashtag #JusticeforTamara, through which the citizens demanded liability from the competent institutions for the death of little Tamara who was twice refused for an operation abroad by the Health Insurance Fund of the Republic of North Macedonia.

In 2018, on the Twitter platform, civic activism began using the hashtag #boycott as a non-political and authentic civic movement that referred to dissatisfaction with the Prespa Agreement and due to the high level of corruption in the Government. The civil movement started with only five activists and in a short period of time it has already registered a number of over 600 activists who used the hashtags 110111#Божкотирам on a daily basis. The

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<sup>101</sup> The civil initiative „ Textbooks and teaching must have” has eight demands: paper textbooks to remain in use for all grades in primary and secondary education, to exclude comprehensive gender-sensitive education for primary school students, ethics of religions to remain an optional subject, not to merge two or more subjects in one, to argue the reduction of the fund of classes in certain subjects, to create appropriate conditions for inclusion of children with disabilities, to create teaching protocols with physical presence in conditions of pandemic and mandatory participation representatives from the civil sector in the working group for amendments to the Law.

<sup>102</sup> <https://www.facebook.com/groups/479418786591247/>

<sup>103</sup> <https://www.facebook.com/groups/152054080269249>

<sup>104</sup> <https://www.facebook.com/groups/220821569545183/>

<sup>105</sup> <https://www.facebook.com/groups/496113925144369>

<sup>106</sup> <https://www.facebook.com/groups/877580769509832/>

<sup>107</sup> <https://www.facebook.com/Gostivar-Protesta-%D0%9F%D1%80%D0%BE%D1%82%D0%B5%D1%81%D1%82%D0%B8-Protesto-106879538259640/>

<sup>108</sup> <https://www.facebook.com/%D0%A1%D1%80%D0%B5%D0%B4%D0%BD%D0%BE%D1%88%D0%BA%D0%BE%D0%BB%D1%81%D0%BA%D0%B8-%D0%93%D0%BB%D0%B0%D1%81-%D0%92%D0%B5%D0%BB%D0%B5%D1%81-105214011723136/>

<sup>109</sup> <https://www.mkd.mk/makedonija/obrazovanie-i-zdravstvo/inicijativata-uchebnici-i-nastava-mora-da-ima-zakazha-protesti>

<sup>110</sup> <https://www.facebook.com/hashtag/%D0%BF%D1%80%D0%B0%D0%B2%D0%B4%D0%B0%D0%B7%D0%B0%D1%82%D0%B0%D0%BC%D0%B0%D1%80%D0%B0>

<sup>111</sup> <https://twitter.com/bojkotiram>

same civic movement was started on the Facebook platform, which currently has about 5,964 followers. In 2019, the use of the hashtags #GreenRevolution and #Fridaysforfuture<sup>112</sup> contributed to informing the citizens, their gathering and their participation in the march announced for clean air in front of the Government of the Republic of North Macedonia.

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## CREATION OF EVENTS IN SOCIAL MEDIA PLATFORM FACEBOOK

In 2021, Facebook event was created due to the decision of the Government prohibiting the presence of unvaccinated persons in the hospitality and catering establishments where there are more than 30 persons present, for any event (celebration, concert, seminar, training, workshop, conference, cultural or sports events). This decision requires that an immunization certificate, at least for the first dose of the vaccine, be shown. This decision was announced to take effect on 16.08.2021. Following the decision of the Government of the Republic of North Macedonia, an event called "Stop Deprivation of Liberty" was created on the social network Facebook, calling for a peaceful protest against the previously adopted decision of the Government which restricted the unvaccinated persons from the opportunity to be present at organized events, celebrations, seminars, etc. For this civil movement, the Facebook group and Facebook event<sup>113</sup> were created.

Additionally, in 2021, an event was created on the social network Facebook to call for the presence at an already scheduled protest march, to support all victims of the criminal group „Public Room” created on Telegram, by which several requests to the competent institutions in the country were made during the march.<sup>114</sup> For this civil movement, through the Facebook event and by using hashtags like #youarenotalone #publicroomisacrime, people went out on the streets to march about the rights of the victims and seek justice for all individuals who were part of this group on the Telegram network. In this group created on Telegram, the participants, shared explicit and compromising photos of girls and women, videos with compromising content, addresses, phone numbers and profiles of Macedonian girls. It had over 6,200 members and about 10,000 photos and videos were shared.<sup>115</sup>

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## CREATION OF ONLINE PETITIONS

According to the Law on Local Self-Government, citizens can participate in deciding on issues of local importance through a civic initiative, a gathering of citizens and a referendum. Only through the legally established rules for their implementation, the citizens could legally influence the decisions made at the local level, which affect their daily lives. Online petitions are not envisaged as a mechanism by which citizens could influence a particular decision that affects them, but still the moral weight given by online petitions as well as the attitude of the residents of certain local communities may affect the decision and the ultimate goal would be that the decision that affects the rights and interests of the residents of a certain area to be withdrawn.

Online petitions are a tool for quick action by a large number of citizens who are affected by a certain issue or decision made at the local level by the local government. Online petitions are not binding for the authorities, but

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<sup>112</sup> [https://twitter.com/fff\\_macedonia/status/1210203760347271175?s=20](https://twitter.com/fff_macedonia/status/1210203760347271175?s=20)

<sup>113</sup> <https://www.facebook.com/events/213350900605040/?ref=newsfeed>

<sup>114</sup> The Public Prosecutor's Office to immediately and thoroughly clear the case "Public Room", which is a crime in which many women are victims of gender-based violence; Appropriate penalties for group administrators as well as all members who have sent and still send photos and write personal information to girls and women; Sexual harassment via the Internet should be specifically regulated in the Criminal Code; Adequate care for the victims by the competent institutions.

<sup>115</sup> <https://www.dw.com/mk/%D1%98%D0%B0%D0%B2%D0%BD%D0%B0-%D1%81%D0%BE%D0%B1%D0%B0-%D1%81%D0%BE-%D0%BC%D1%80%D0%B0%D1%87%D0%BD%D0%B8-%D1%82%D0%B0%D1%98%D0%BD%D0%B8/a-56363266>

they must not be denied or neglected simply because they are not envisaged by law. At a time when the Internet and social networks are part of the daily life of every individual, when the individual is informed through the Internet and social networks about the most important events in his/her vicinity, the online petitions should be taken into account by the public authorities. With the petitions, the citizens would inform the authorities of their opinions on certain issues that should normally be respected given the fact that the public authorization holders as well as representatives in the Assembly and the Government are elected by the people.

In our country, online petitions are a very important and most used mechanism through which the population can persuade the Government to change or modify certain laws or decisions. By online petitions, you can connect with other people without geographical restrictions. During the state of emergency, in 2020, there has been an increased use of Internet platforms for creating online petitions by the citizens of our country. During 2020, several petitions were published through which citizens using the Internet, could sign a petition by which they would contribute to important issues in the daily lives of people, such as: Petition to the Ministry of Education and Science to cancel the State Finishing High School Exam (Matura) in 2020, petition to return the Law against smoking indoors<sup>116</sup>, petition to save Prespa Lake<sup>117</sup>. During 2021, an online petition was created requesting to stop the urban rampage and construction of a building near Holiday Inn Hotel<sup>118</sup>, an online petition for textbooks and physical attendance to classes<sup>119</sup> and online petition for closure of the Bitola Zoo, which was successful, the number of required signatories was reached and it was submitted to the municipal council.<sup>120</sup>

Although online petitions do not have a direct impact on the issues for which they is signed, still the biggest benefit is that the online petitions themselves raise awareness of the problem, i.e. the specific legal issue that affects a large number of citizens in a country. Hence, by raising the awareness of the population, moral and civic weight is given to the legal issue and the decision makers in the country are expected to take a step forward, to hear the voice of the population and to respond to the requests submitted to them.

In 2016, a petition of the citizens in RNM, for stopping the construction of the Panoramic Wheel in the center of Skopje appeared on the online platform Change.org. The petition was shortly signed by more than 7,800 signatories from December 2016 to January 2017. The petition was intended to be submitted to the former mayor of the city of Skopje - Koce Trajanovski, who through the Public Transport Company - Skopje was also an investor in the building that would cost over 19.1 million euros. During 2017, the councilors in the Municipality of Center voted for the annulment of the detailed urban plan Mal Ring, after which all construction activities of buildings in the disputed parts of the municipality where the Panoramic wheel belonged had to be stopped. In 2018, a decision was made not to build the Panoramic wheel, but to build only a pedestrian bridge, with three stands intended for book sellers who would be relocated from Macedonia Square.

<sup>116</sup> [https://www.change.org/p/nqo-%D1%81%D1%82%D0%BE%D0%BF-%D0%B7%D0%B0-%D0%BF%D1%83%D1%88%D0%B5%D1%9A%D0%B5-%D0%B2%D0%BE-%D0%B7%D0%B0%D1%82%D0%B2%D0%BE%D1%80%D0%B5%D0%BD-%D0%BF%D1%80%D0%BE%D1%81%D1%82%D0%BE%D1%80?recruiter=798051703&utm\\_source=share\\_petition&utm\\_medium=copylink&utm\\_campaign=share\\_petition](https://www.change.org/p/nqo-%D1%81%D1%82%D0%BE%D0%BF-%D0%B7%D0%B0-%D0%BF%D1%83%D1%88%D0%B5%D1%9A%D0%B5-%D0%B2%D0%BE-%D0%B7%D0%B0%D1%82%D0%B2%D0%BE%D1%80%D0%B5%D0%BD-%D0%BF%D1%80%D0%BE%D1%81%D1%82%D0%BE%D1%80?recruiter=798051703&utm_source=share_petition&utm_medium=copylink&utm_campaign=share_petition)

<sup>117</sup> [https://www.change.org/p/%D0%B2%D0%BB%D0%B0%D0%B4%D0%B0-%D0%BD%D0%B0-%D1%80%D0%B5%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B0-%D0%BC%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0%B0-%D0%B1%D0%B0%D1%80%D0%B0%D1%9A%D0%B5-%D0%B7%D0%B0-%D0%BF%D1%80%D0%B5%D0%B7%D0%B5%D0%BC%D0%B0%D1%9A%D0%B5-%D0%B8%D1%82%D0%BD%D0%B8-%D0%BC%D0%B5%D1%80%D0%BA%D0%B8-%D0%B7%D0%B0-%D1%81%D0%BF%D0%B0%D1%81-%D0%BD%D0%B0-%D0%BF%D1%80%D0%B5%D1%81%D0%BF%D0%B0%D0%BD%D1%81%D0%BA%D0%BE-%D0%B5%D0%B7%D0%B5%D1%80%D0%BE?utm\\_source=share\\_petition&utm\\_medium=custom\\_url&recruited\\_by\\_id=c5f1f100-fe8e-11ea-9102-99fb7b25b6c](https://www.change.org/p/%D0%B2%D0%BB%D0%B0%D0%B4%D0%B0-%D0%BD%D0%B0-%D1%80%D0%B5%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B0-%D0%BC%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0%B0-%D0%B1%D0%B0%D1%80%D0%B0%D1%9A%D0%B5-%D0%B7%D0%B0-%D0%BF%D1%80%D0%B5%D0%B7%D0%B5%D0%BC%D0%B0%D1%9A%D0%B5-%D0%B8%D1%82%D0%BD%D0%B8-%D0%BC%D0%B5%D1%80%D0%BA%D0%B8-%D0%B7%D0%B0-%D1%81%D0%BF%D0%B0%D1%81-%D0%BD%D0%B0-%D0%BF%D1%80%D0%B5%D1%81%D0%BF%D0%B0%D0%BD%D1%81%D0%BA%D0%BE-%D0%B5%D0%B7%D0%B5%D1%80%D0%BE?utm_source=share_petition&utm_medium=custom_url&recruited_by_id=c5f1f100-fe8e-11ea-9102-99fb7b25b6c)

<sup>118</sup> [https://www.change.org/p/%D0%BE%D0%BF%D1%88%D1%82%D0%B8%D0%BD%D0%B0-%D1%86%D0%B5%D0%BD%D1%82%D0%B0%D1%80-%D0%BD%D0%B5-%D0%B7%D0%B0-%D0%B8%D0%B7%D0%B3%D1%80%D0%B0%D0%B4%D0%B1%D0%B0-%D0%BD%D0%B0-%D0%BD%D0%B5%D1%85%D1%83%D0%BC%D0%B0%D0%BD%D0%BE-%D0%B3%D0%BE%D0%BB%D0%B5%D0%BC-%D0%BE%D0%B1%D1%98%D0%B5%D0%BA%D1%82-%D0%BD%D0%B0-%D0%BF%D0%B0%D1%80%D0%BA%D0%B8%D0%B3%D0%BE%D1%82-%D0%BF%D1%80%D0%B5%D0%B4-%D1%85%D0%BE%D1%82%D0%B5%D0%BB-%D1%85%D0%BE%D0%BB%D0%B8%D0%B4%D0%B5%D1%98-%D0%B8%D0%BD?recruiter=656178911&utm\\_source=share\\_petition&utm\\_medium=facebook&utm\\_campaign=psf\\_combo\\_share\\_abi&utm\\_term=psf\\_combo\\_share\\_abi&recruited\\_by\\_id=2b10a1b0-cb19-11e6-a030-61777a4b2b2f&utm\\_content=mit-28294873-10%3Av2](https://www.change.org/p/%D0%BE%D0%BF%D1%88%D1%82%D0%B8%D0%BD%D0%B0-%D1%86%D0%B5%D0%BD%D1%82%D0%B0%D1%80-%D0%BD%D0%B5-%D0%B7%D0%B0-%D0%B8%D0%B7%D0%B3%D1%80%D0%B0%D0%B4%D0%B1%D0%B0-%D0%BD%D0%B0-%D0%BD%D0%B5%D1%85%D1%83%D0%BC%D0%B0%D0%BD%D0%BE-%D0%B3%D0%BE%D0%BB%D0%B5%D0%BC-%D0%BE%D0%B1%D1%98%D0%B5%D0%BA%D1%82-%D0%BD%D0%B0-%D0%BF%D0%B0%D1%80%D0%BA%D0%B8%D0%B3%D0%BE%D1%82-%D0%BF%D1%80%D0%B5%D0%B4-%D1%85%D0%BE%D1%82%D0%B5%D0%BB-%D1%85%D0%BE%D0%BB%D0%B8%D0%B4%D0%B5%D1%98-%D0%B8%D0%BD?recruiter=656178911&utm_source=share_petition&utm_medium=facebook&utm_campaign=psf_combo_share_abi&utm_term=psf_combo_share_abi&recruited_by_id=2b10a1b0-cb19-11e6-a030-61777a4b2b2f&utm_content=mit-28294873-10%3Av2)

<sup>119</sup> <https://www.change.org/p/%D0%BC%D0%B8%D0%BD%D0%B8%D1%81%D1%82%D0%B5%D1%80%D1%81%D1%82%D0%B2%D0%BE-%D0%B7%D0%B0-%D0%BE%D0%B1%D1%80%D0%B0%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%B8%D0%B5-%D1%83%D1%87%D0%B5%D0%B1%D0%BD%D0%B8%D1%86%D0%B8-%D0%B8-%D0%BD%D0%B0%D1%81%D1%82%D0%B0%D0%B2%D0%B0-%D0%BE%D0%B4-%D1%81%D0%B5%D0%BF%D1%82%D0%B5%D0%BC%D0%B2%D1%80%D0%B8>

<sup>120</sup> <https://moigrad.mk/initiative/?id=90>

## VIII INTERVIEWS WITH ORGANIZERS, ACTIVISTS AND OTHER STAKEHOLDERS

In order to obtain more detailed opinions and experiences, we conducted interviews with various stakeholders who touch upon the right to peaceful assembly from different perspectives.

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### INTERVIEW NO. 1 WITH AN ACTIVIST AND PARTICIPANT IN THE COLORFUL REVOLUTION AND A GREAT NUMBER OF OTHER PROTESTS, PETITIONS AND ACTIVIST MOVEMENTS.

To the question about the obstacles she faces as an activist and participant in public gatherings, she responded: *“Over the years I have experienced most of the above: anonymous threats, public defamation, hate speech, pressure from employers, pressure from authorities, personal attacks on social networks.”* But also that she has received threats and pressure. – *“Pressure from the former director, who, by using his own position was telling lies in the media. Pressure on my parents - Get your daughter act together. Hate speech by public figures in various media.”*

To the questions of whether she feels safe when she is part of public gatherings and whether she thinks that the state provides conditions for free exercise of the right to peaceful assembly/protest - she gives the same answer, that it depends on the public gathering/protest. She answered that she was verbally and physically attacked during the protests and that she received a misdemeanor fine for her participation in the protest. The police hindered her right to peaceful assembly, especially when a counter-protest was taking place. She gave an average score of 3 for compliance with the right to peaceful assembly in RNM.

Specifically, in regard to the public gatherings organized and/or conducted online, she emphasized the opinion that they are effective only if they are accompanied by appropriate action. S.S. says that *“There are successful campaigns or reactions, but I cannot say that they are more successful than an assembly/protest with physical presence.”* She noted that the advantage of online assemblies is that all aspects are made easier. From organization to implementation. However, she considers that the effect is significantly smaller, although it can often be more successful, due to the visibility, greater presence (a number that is easily manipulated at this type of protest), etc.

As a disadvantage to the online protests, she pointed out that the easier organization means easier taking control of the protests, i.e. the advantages of such a protest are also its weaknesses. To the question of which protest she would prefer and choose - online or physical presence, the following answer was received: *“Protest with physical presence always! Because of the impact it leaves in the environment, because of the possibility to be contextualized on several levels (including the space), because of the impact that the individual can have, whereas the cyberspace makes it impossible because it dehumanizes. The profile is not a human being.”*

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### INTERVIEW NO. 2 WITH AN ORGANIZER OF SKOPJE PRIDE

One of the multi-year organizers of the Skopje Pride was also interviewed. He responded that he felt very free as an organizer and activist and that he always felt safe when he was part of public gatherings. He cited hate speech on social media and counter-protests as obstacles he faces while organizing. He is satisfied with the cooperation and communication with the Ministry of Interior, as well as with their response to the challenges that the Skopje Pride has had. To the question of whether he has been verbally or physically attacked by other

citizens during public gatherings, he responded: *“No, I was not, but there were attacks on activists and participants in Skopje Pride after the Pride itself, in 2019 and 2021.”*

Regarding the online public gatherings, he pointed out that both the Pride in 2019 and 2021 were accompanied by online calls for organizing and mobilizing, as well as online sharing of information with the participants. He considers that online public gatherings are effective and that the Covid-19 pandemic has shown that the existence of hybrid models of organizing events/assemblies/protests is beneficial to anyone who wants to participate - both physically and online. When asked if there is a need to change or adjust the legal framework, given the new technologies and the growing number of protests and initiatives organized online on social networks, he responded: *“Definitely, especially for regulating and sanctioning hate speech online, including the one on the basis of sexual orientation and gender identity.”* He does not consider the right to privacy to be sufficiently protected and thinks that it would be useful to regulate it further, especially by regulating and sanctioning hate speech and cyber-violence.

To the questions of whether they have received threats in the groups on the social networks where they organize the protests/initiatives. And whether they have reported and whether the police have taken certain actions, he responded: *“All threats of violence and all content with hate speech against LGBTI on social networks have been duly reported to the Basic Public Prosecutor's Office and the Ministry of Interior. The percentage of response to complaints is very low (below 15%), legal deadlines for responding to complaints are not complied with, and hate speech and threats of violence against LGBTI people are not recognized.”*

Between the public gatherings online or with physical presence, he opted for a mixture of both types of protests - protest with physical presence is preferable, with the possibility of streaming online on social networks, for the purpose of increased visibility, mobilization and impact.

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### INTERVIEW NO. 3 WITH A JOURNALIST WHO HAS REPORTED FROM NUMEROUS ASSEMBLIES AND PROTESTS

She shared with us her opinion on public gatherings and the right to peaceful assembly from the perspective of a journalist. We asked her as a journalist, how she has felt at a public gathering that she followed and reported on. She responded: *“From my previous experience of following public gatherings and protests, more than 14 years of working as a journalist, I have generally felt safe. The biggest danger I have felt was during the protests over the “Monster” case in 2014. The threat to safety was from the protest organizers and the response of the police thereto, which led to the exposure of journalist teams to tear gas and other unpredictable situations. The situation was similar with the assembly after the publication of the wiretapped conversation about the murder of Martin Neskoski, which was organized in front of the Government, but then the police “dispersed” it through the streets of the center of Skopje.”*

Regarding the question of how safe and protected by the police officers she feels, she stressed that it depended on the public gathering and the protest. In general, there were no problems when the contact with the police was established in a timely manner. She had some difficulties when she had to prove that she was a journalist provided that at that moment the press ID was not visibly displayed. In some cases, when the protest has escalated, she has not felt protected either by the protesters, or the crowd, or the police.

Threats and harassment are common while reporting on public gatherings and protests, but not all have been so threatening to be taken seriously. In general, she feels protected, but considers that there is room for improvement, especially in the area of protection by the police. When asked if they have ever been prohibited to video record police officers while policing a public gathering, she responded that it happens almost always,

initially they are asked not to video record the police officers in the face, before they explain that it is their job and that they have a right to do so. She responded that on several occasions the police have requested their recordings of a public gathering, but could not answer exactly how many times or for which public gatherings, because the contact was established between the police and the editor-in-chief or the photojournalists and cameramen of the given protest.

She considers that the state generally provides conditions for the free exercise of the right to peaceful protest, although in her view someone's right to protest is more privileged than the right of others. She considers that the laws related to public gatherings are generally good and clear, but their proper implementation is lacking.

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#### INTERVIEW NO. 4 WITH A POLICE OFFICER

We have also covered public gatherings and the right to peaceful assembly from the other side of the story, through the perspective of those who police the gatherings - the police officers. The police officer pointed out that his communication with the organizers has generally been good. After the announcement of the public gathering, the organizers are communicated and discussed with about the places where the event will take place and the indication/warning for compliance with the law on public gatherings, and if needed, the hiring a stewards or a private security agency, as well as the fact that the telephone numbers are exchanged. He says that challenges and problems in policing a public gathering occur where there is non-compliance with the rules and legal provisions, presence at the public gathering, presence of provocateurs and violators of public peace and order.

He stressed that his task, when policing a public gathering, is to ensure a favorable, security situation and prevention for the proper public peace and order, as well as to protect the safety of police officers and other citizens present during the protest. Use of force and means of coercion, he explained to us, are applied when the public peace and order are disturbed, but only on a larger scale or in the event of an attack on the police officers. When asked what kind of means of surveillance and collection of photographs the police use during the protests, he responded: *"In certain cases, depending on the protest, some of the video surveillance is used, in certain cases drones and sometimes body cameras."*

Regarding the public gatherings on the online space, he stressed that there are cases where they have received reports from activists-organizers for certain pressure and threats against them and that appropriate actions and measures have been taken. He pointed out that the police officers themselves receive threats when policing public gatherings. He thinks that there is a special service for policing and monitoring public gatherings online, but he is not sure.

When asked whether the police and other authorities have been held accountable for their behavior and actions during the protests and in what way, he responded: *"They are held accountable in cases when they use force on their own initiative, illegally, where the conditions for that are not met and when they do not act in accordance with the legal provisions and their police powers."* In practice, he shared with us, that there was a case where a police officer was held accountable for misconduct, the case was reported to internal control, disciplinary proceedings were initiated and penalties were imposed depending on the disciplinary offense.

He considers that it is easier to police a protest with a physical presence and gives a score of 4 on how much the right to peaceful assembly is complied with and enabled in RNM.

### PUBLIC ROOM CASE

In 2020, a closed group named Public room was created in the social media platform Telegram. In this closed group, the members shared explicit photos, videos with pornographic content of girls and women, as well as their telephone numbers with information about their place of residence. Most of the victims were girls and women. Three days after the group was created, the group had more than 7,400 members. Following the measures taken by the Ministry of Interior, this group on the Telegram platform was deleted and the preliminary investigation procedure was conducted by the Basic Public Prosecutor's Office.

Again during 2021, information was shared with the public about a newly created group of public room, known as public room 2, in which the members of the group also shared pictures and videos with pornographic content as well as information about the persons on pictures, sharing information about their place of residence. In this group created on Telegram, the participants, shared explicit and compromising photos of girls and women, videos with compromising content, addresses, phone numbers and profiles of Macedonian girls. It had over 6,200 members and about 10,000 photos and videos were shared.<sup>121</sup> Following this information about the existence of a newly created group with the same purpose as the previously created group, an event was created on the social network Facebook to call for the presence at an already scheduled protest march, to support all victims of the criminal group, Public Room” created on Telegram, by which several requests to the competent institutions in the country were made during the march. For this civil movement, through the Facebook event and by using hashtags like #youarenotalone and #publicroomisacrime, people went out on the streets to march about the rights of the victims and seek justice for all individuals who were part of this group on the Telegram network.<sup>122</sup>

As a result of the public pressure and the organization of the protest march, the Basic Public Prosecutor's Office informed the public about the actions taken in relation to the first created group that an Indictment was filed against two persons aged 32 and 21, who are charged with a crime - Production and distribution of child pornography, provided in Article 193-a paragraph 3 in conjunction with paragraph 1 of the Criminal Code. Regarding the first Public Room, criminal proceedings began in July 2021. Regarding the second group, the case is still in the preliminary investigation phase. The organization of the citizens in a public gathering in order to support the victims of these groups, as well as the reaction of the non-governmental organizations in terms of emphasizing the needs for amendment of the Criminal Code have borne results, thus at the moment in RNM we are working on legal amendments to the Criminal Code which provide for a new crime of Stalking and imposes stricter sanctions for harassment committed online.

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<sup>121</sup> <https://bit.ly/3FV9VAa>

<sup>122</sup> The Public Prosecutor's Office to immediately and thoroughly clear the case "Public Room", which is a crime in which many women are victims of gender-based violence; Appropriate penalties for group administrators as well as all members who have sent and still send photos and write personal information to girls and women; Sexual harassment via the Internet should be specifically regulated in the Criminal Code; Adequate care for the victims by the competent institutions.

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## BITOLA ZOO CASE

The situation with the Bitola Zoo is particularly worrying due to the way the animals are kept and raised. Anima Mundi, an animal protection organization, has repeatedly reacted to the way animals are kept and fed. For years, the organization has demanded that the zoo be closed, the animals removed from the zoo and handed over to wildlife re-socialization centers. Despite such requests, the institutions continued to turn a deaf ear to the issue. During 2021, the civil society organization Green Human City established a platform called “MojGrad”, which provides a civic initiative in the decision-making process in the Council of the City of Skopje.<sup>123</sup> On this platform, every citizen can submit a proposal on what should be changed in his/her municipality.

The proposals are further voted by the other users of the platform and the top three proposals are submitted to the city authorities for approval and implementation at each session of the City of Skopje. At the moment, all proposals related to issues under the responsibility of the City of Skopje are submitted directly to the municipal council. For all other proposals for which the City of Skopje is not competent, they are assisted in a way that they are advised on how to communicate with their local authorities and still take a civic initiative and action upon a submitted proposal. By using this platform and after the video of a resident of the municipality of Bitola cooling the bear with water, during June 2021, an online petition was created on the <sup>124</sup>“MojGrad” platform for closing the Bitola Zoo. This civic initiative was voted shortly with 4699 votes in favor and 45 votes against. Given the success of this civic petition, and the high number of votes received to close the zoo, it was submitted to the Municipal Council in Bitola for voting.<sup>125</sup>

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## PANORAMIC WHEEL IN SKOPJE CASE

During 2014, the government announced the construction of a panoramic wheel on the quay of the Vardar River. The panoramic wheel was planned to be built between the Stone Bridge and the Goce Delchev Bridge on a special construction on an additional bridge that would connect both sides of the Vardar River. In 2015, its construction began. In 2016, a petition of the citizens in RNM, for stopping the construction of the Panoramic Wheel in the center of Skopje appeared on the online platform Change.org. The petition was shortly signed by more than 7,800 signatories from December 2016 to January 2017.

The petition was intended to be submitted to the former mayor of the city of Skopje- Koce Trajanovski, who through the Public Transport Company - Skopje was also an investor in the building that would cost over 19.1 million euros. During 2017, the councilors in the Municipality of Center voted for the annulment of the detailed urban plan Mal Ring, after which all construction activities of buildings in the disputed parts of the municipality where the Panoramic wheel belonged had to be stopped. In 2018, a decision was made not to build the Panoramic wheel, but only a pedestrian bridge, with three stands intended for book sellers who would be relocated from Macedonia Square.<sup>126127</sup>

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<sup>123</sup> <https://mojgrad.mk/>

<sup>124</sup> <https://www.radiomof.mk/objavena-platformatata-mojgrad-za-gragjanska-participacija-vo-nosenjeto-odluki-vo-sovetot-na-grad-skopje/>

<sup>125</sup> <https://mojgrad.mk/initiative/?id=90>

<sup>126</sup> <https://www.porta3.mk/nema-panoramsko-trkalo-no-ima-most-chie-urivanje-chini-isto-kolku-i-negovoto-zavrshuvanje/>

<sup>127</sup> <https://sdk.mk/index.php/dopisna-mrezha/namesto-panoramsko-trkalo-na-mostot-na-vardar-postaveni-trafiki-za-prodavachite-na-knigi-od-ploshtad-makedonija/>

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## PETITION TO SAVE LAKE OF PRESPA CASE

During 2020, people started sharing photos of Prespa Lake on social networks, on which a serious decrease in its water level could be noticed. The water level of Prespa Lake was 36 centimeters below the absolute minimum allowed. The same situation was observed on the shores of Prespa Lake, which are located in the Republic of Albania and in the Republic of Greece. Having in mind the seriousness and the worrying situation with one of the natural lakes in the country, the non-governmental organization Ohrid SOS created a petition to save Lake Prespa<sup>128</sup> which called for a serious approach to this issue by the competent institutions and immediate undertaking of activities for the preservation of Prespa Lake.

The petition was supported by 20 non-governmental organizations and in a shortly it reached the number of 5,811 signatories. This petition was submitted to the Government of the Republic of North Macedonia. After the petition was submitted, the Government of the Republic of North Macedonia stated that this specific initiative would be analyzed in detail scientifically and legally at the first meeting of the Expert Working Group. The petition contained several requests for commitment of the competent institutions to take measures to save Prespa Lake.<sup>129</sup> Following the establishment of the Expert Working Group, an Action Plan was prepared and adopted by the Government of the RNM during December 2020.<sup>130</sup>

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## PETITION TO STOP THE POLLUTION CASE

During 2021, people started sharing a petition<sup>131</sup> on social networks, which alerted the public and citizens in the country about the danger for the council of the municipality of Gazi Baba to adopt three urban plans for the location known as Zelezara Complex without a public debate. According to the General Urban Plan of the City of Skopje, the main purpose of this location is G-production, heavy and light industry. These detailed urban plans cover new green areas and instead of reducing the industry that pollutes the environment in the City of Skopje, the problem of pollution increases and opens doors for new technological processes dangerous to human health and the environment.

Additionally, along the line above the Zelezara Complex to the ring road on an area of 230,000 m<sup>2</sup>, at the same time, a procedure was conducted for three urban projects with a purpose of R3.1 - plans for thermal physical-chemical and chemical treatment of non-hazardous waste. In a short period of time, this petition was signed by 1850 signatories. In addition to the residents of the municipality of Gazi Baba, the environmentalists from 02 Initiative for protection and defense of nature and provision of clean and healthy environment<sup>132</sup> had a sharp reaction to such plans for construction of the above industrial facilities. Despite the Covid-19 pandemic, in April 2021, the municipality organized a public presentation of the three detailed urban plans, which was held with a physical presence in the municipal building.<sup>133</sup> After the reaction of the citizens and the environmental activists, the mayor of the City of Skopje stated that the plans would be rejected and that the City of Skopje would not allow heavy industry in the settlement of Municipality of Gazi Baba.<sup>134</sup>

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<sup>128</sup> <https://rb.gv/spscep>

<sup>129</sup> The requests in the petition referred to: establishment of a scientific / technical commission for rescuing the Prespa Lake that will examine the situation and will propose urgent measures to improve the situation within 10 days from the announcement of the petition; to urgently initiate an interstate meeting at expert level together with relevant organizations involved in the Prespa Region that will work in a coordinated manner, the Government to define a phased rescue plan for Prespa Lake with clearly defined deadlines and information on the plan and all activities undertaken to be updated weekly on the website of the Ministry of Environment and Physical Planning and be easily accessible to the public.

<sup>130</sup> <https://bit.ly/3jdTnK1>

<sup>131</sup> <https://bit.ly/3G0dQfc>

<sup>132</sup> <https://www.radiomof.mk/o2-inicijativa-ne-smee-da-se-dozvoli-otvoranje-na-novi-industriski-kapaciteti-vo-gazi-baba/>

<sup>133</sup> <https://www.radiomof.mk/video-foto-intenzivna-rasprava-vo-gazi-baba-prekinata-prezentacija-za-dup-ovite/>

<sup>134</sup> <https://republika.mk/vesti/skopje/shilegov-od-gradot-nema-soglasnost-kakva-bilo-teshka-industrija-da-se-razvie-vo-ramki-na-zelezara/>

The Macedonian Young Lawyers Association (MYLA) conducted a survey on the right to peaceful assembly in North Macedonia during September 2021. A total of 135 participants shared their experiences, views and perceptions of the right to peaceful assembly in the country. This factsheet contains the most significant survey findings.

Key findings include:

- **There is a need for legislative changes that will ensure easier and smoother enjoyment of the right to peaceful assembly in North Macedonia;**
- **The legal provisions related to the right to peaceful assembly should be clearer and simpler to understand;**
- **New technologies are useful tools for exercising the right to peaceful assembly. However, citizens prefer assemblies with physical presence, because they consider that only in that way they can achieve change, and**
- **Online petitions are a popular form of digital gathering and many respondents consider that they can make a difference.**

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### LEGAL FRAMEWORK ON THE RIGHT TO PEACEFUL ASSEMBLY

The right to peaceful assembly in North Macedonia is a constitutionally guaranteed right. The basic law that regulates this right is the Law on Public Gatherings. Additional laws covering some of the issues related to the right to assembly in North Macedonia are: the Criminal Code, the Law on Labor Relations, the Law on Police, the Law on Misdemeanors against Public Order and the Law on Defense.

Most of the respondents have stated that they are only partially familiar with what the right to peaceful assembly means and how to exercise it (48.15%), followed by those who think they are well familiar with the right (41.48%), and only a small percentage (10.37%) of the respondents say that they are not familiar with this right.

The average score of how clear and simple the laws governing the right to peaceful assembly in North Macedonia are, on a scale of 1-5 (where 1 is insufficient and 5 is excellent), is 2.88.

The respondents consider that there is a need for legislative changes to ensure easier and smoother enjoyment of the right to peaceful assembly and protest, largely or only partially (93.34%).

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### DIGITALLY-MEDIATED ASSEMBLIES IN NORTH MACEDONIA

A digitally-mediated assembly is a gathering of more than one person for a specific purpose, that takes place either through the support or by means of digital communication technologies, e.g., via mobile phones, internet services or social media.<sup>135</sup> The citizens that were surveyed largely consider that the new technologies are useful tools for exercising the right to peaceful assembly (72.72%). On the other hand, the survey also showed that citizens still prefer assemblies with physical presence (80.81%). The average score they give to the possible

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<sup>135</sup> European Center for Non-Profit Law (ECNL), Factsheet no. 1: Digitally-mediated Assemblies and UN standards available at: <http://myla.org.mk/wp-content/uploads/2021/09/factsheet-online-assemblies-Macedonian.pdf>

success of digital assemblies and the chances to achieve the intended changes in this way, on a scale of 1-5 (where 1 is insufficient and 5 is excellent), is 2.06. However, the survey has also shown that online petitions are popular among citizens. As many as 76.77% of respondents have participated in an online petition, and 57.58% of respondents consider that they can lead to the intended goal and make a change.

Among the biggest advantages of digitally-mediated assemblies, the respondents indicate:

- ➔ easier organization and mobilization of participants;
- ➔ fast and easier communication;
- ➔ easier dissemination of information, reaching a wider audience and attracting participants and like-minded people and
- ➔ lower costs.

Among the biggest disadvantages of digitally-mediated assemblies, the respondents indicate:

- ➔ limited internet access of the citizens;
- ➔ intentional crash of networks and internet shutdowns by the state;
- ➔ removing and blocking content from social networks and online space, and
- ➔ smaller prospects for making changes compared to assemblies held in physical space.

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## RIGHT TO PEACEFUL ASSEMBLY- EXPERIENCES IN PRACTICE

The survey also aimed to examine the experiences of participants and organizers of assemblies in practice. On a scale of 1-5 (where 1 is lowest and 5 the highest), the respondents give a score of 2.76 in relation to the conditions provided by the state for the free exercise of the right to peaceful assembly. Many of the respondents have also stated that they have been discouraged from participating in a peaceful assembly (65.93%). Most of them find the reasons for that in the politicization of the assemblies, the lack of trust that they can make a change in that way and out of fear for their own safety. However, only a small number of the respondents (7.41%) have stated that they have had negative consequences due to participation in a peaceful assembly. 7.41% have stated that they have had negative consequences due to participation in a peaceful gathering. The percentage of those who claim that they have suffered insults and threats for participation in a peaceful assembly is higher (18.1)

- ➔ Legal amendments to the Law on Public Gatherings are needed. The new provisions should provide an appropriate definition of public assembly and instead of the wording of public assembly is held only outdoors or indoors, it is necessary to add an extended definition of peaceful assemblies are held: outdoors, indoors or online; in public and private spaces; or a combination thereof.
- ➔ It is necessary to remove the number of citizens that defines the public gathering, and there should be no limitation on the number of participants in assemblies. Such restrictions can be accepted only if there is a clear legitimate ground for restrictions, for example, when public safety considerations dictate a maximum crowd capacity for a stadium or a bridge, or when public health considerations dictate physical distancing.
- ➔ The Law on Electronic Communications obliges the operators themselves (mobile operators) to keep the data on electronic communications created or managed by them in the provision of public electronic communication networks and/or services in order to enable criminal proceedings or protect the security and defense interests of the Republic of North Macedonia. Regarding the blocking of the internet network and the internet signal on the telephones, it is necessary to regulate that the state must not block the Internet connectivity in relation to peaceful assemblies. The same applies to geo-targeted or technology-specific interference with connectivity or access to content. It is necessary to ensure that the activities of Internet service providers and intermediaries do not unduly restrict assemblies or the privacy of assembly participants.
- ➔ The Criminal Code contains crimes that can be committed through a computer system and one of the most common crimes committed on social networks and by using new technologies is the crime of dissemination of racist and xenophobic material through a computer system. Although hate speech largely refers to ethnicity and sexual orientation, the Law on Public Gatherings needs to include a provision that would protect participants from all forms of discriminatory abuse and assault.
- ➔ When we talk about the protection of journalists, they do public interest work during public gatherings. They do not have special protection with the existing legal provisions, except the provision by which they are excluded from liability for committing four criminal acts while performing their profession. There is no provision that would provide special protection for journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies. They may not be prohibited from, or unduly limited in, performing these functions, including monitoring the actions of law enforcement officials. They must not face reprisals or other harassment, and their equipment must not be confiscated or damaged<sup>136 137</sup>.

<sup>136</sup> Criminal Code, provision 182-a

<sup>137</sup> CCPR/C/MRT/CO/1, para. 22. See also General Assembly resolution 66/164.

- ➔ The Law on Public Gatherings provides for misdemeanor provisions in all cases when the protest organizers as well as the participants in the gatherings do not comply with the obligations provided in the Law on Public Gatherings. For these violations, a misdemeanor procedure before a competent court is envisaged. But obstructing the public gathering as well as preventing and disturbing the public gathering is a crime provided by the Criminal Code. Although it is a criminal act prosecuted ex officio, the court criminal procedure for processing and completing these criminal acts takes a long time, hence, it is necessary to provide an effective remedy for violation of the rights to freedom of peaceful assembly and of association available and accessible to all. Remedies should be accessible, affordable, adequate and timely, from the perspective of the rights holders affected. States should provide remediation through independent judicial, administrative or legislative authorities or any other competent independent authority provided by the legal system taking into account the fact that this is a constitutionally guaranteed right to association and public assembly<sup>138</sup>.
  
- ➔ It is necessary to regulate the possibility for participants to protest by wearing masks that cover their face such as hoods or masks, or taking other steps to participate anonymously. This may form a part of the expressive element of a peaceful assembly or serve to counter reprisals or to protect privacy, including in the context of new surveillance technologies. The anonymity of the participants should be allowed unless their conduct presents reasonable grounds for arrest, or there are other similarly compelling reasons, such as the fact that the face covering forms part of a symbol that is, exceptionally, restricted for the reasons referred to above.

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<sup>138</sup> <http://www.merc.org.mk/Files/Write/Documents/04745/mk/Krivicno-pravnata-zastita-za-krivicnite-dela-protiv-slobodata-i-pravata-na-covekot.pdf> page 60-61

