

MULTIMEDIA TRAINING KIT

FREEDOM OF ASSOCIATION AND FREEDOM OF ASSEMBLY HANDOUT

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MULTIMEDIA TRAINING KIT.....	1
FREEDOM OF ASSOCIATION AND FREEDOM OF ASSEMBLY HANDOUT.....	1
About this document.....	1
Copyright information.....	1
Module outline.....	1
Freedom of association and freedom of assembly.....	2
The impact of the internet on freedom of association and assembly.....	4
Specific issues.....	7
Summary.....	8

About this document

These materials are part of the Multimedia Training Kit (MMTK). The MMTK provides an integrated set of multimedia training materials and resources to support community media, community multimedia centres, telecentres, and other initiatives using information and communications technologies (ICTs) to empower communities and support development work.

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Module outline

This is the third in a series of training modules concerned with the relationship between human rights, ICTs and the internet. These modules are intended to help those who work on human rights and/or ICTs, and others with an interest in the issues, to understand ways in which the internet is affecting the enjoyment and protection of rights – now and in the future – and explore how these affect their work.

This module provides an overview of the relationship between the internet, freedom of association and freedom of assembly. As well as this text handout, it includes a set of

presentation slides, exercises and case studies, and a list of additional readings. It raises the following core questions:

1. What is the meaning of freedom of association and freedom of assembly?
2. What limits are placed upon these in the international rights regime and how do they relate to other rights?
3. What has been the impact of the internet on opportunities to exercise freedom of association and assembly?
4. What has been the impact of the internet on the relationship between these and other rights, including freedom of expression, information and privacy?
5. What has been the impact of the internet on limitations to and violations of these rights?
6. How should rights professionals respond to the implications of the internet for their work in these areas?

Other modules in the series are concerned with:

1. An overview of human rights and the internet
2. Freedom of expression and freedom of information
3. The right to privacy.

This handout begins by describing the context for discussion of freedom of association and freedom of assembly.

- Section 2 summarises the meaning of freedom of association and freedom of assembly within the international rights regime.
- Section 3 looks at ways in which ICTs and the internet have affected the exercise, enforcement and violation of these two rights.
- Section 4 raises a number of particular issues arising from individual aspects of these two rights and the relationship between them, including their exercise, enforcement and violation.
- Section 5 provides a brief summary of the above.

Freedom of association and freedom of assembly

Freedom of association and freedom of assembly are important civil and political rights within the international rights regime. The fundamental principle – that “everyone has the right to freedom of peaceful assembly and association” – is set out in Article 20 of the Universal Declaration of Human Rights (UDHR), along with the proviso that “no one may be compelled to belong to an association.” The right to belong to an association, in other words, can be exercised both positively and negatively.

The distinction between association and assembly should be clearly understood. Freedom of association concerns the right of individuals to interact both with other individuals on a one-to-one basis, and to join together with others in formal or informal groups. An **association** in this latter sense was defined by the UN Special Rapporteur on the rights to freedom of peaceful assembly and to association in his 2012 report as meaning “any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests.”

Such associations may vary widely in purpose, including sports and social clubs, faith groups, political organisations, occupational and economic groups, women’s associations, etc. They may be formal or informal in character; local, national or international. As well as being

generally applicable, the term freedom of association has been particularly associated with workers' employment rights, particularly the right to join (or not join) a trade union. The International Covenant on Civil and Political Rights (ICCPR), which gives international legal status to rights within its mandate, makes this clear in its formulation of the right of association (in Article 22):

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

The rights of trades unions themselves, including the right to strike in conformity with national law, are spelt out in Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which, like the ICCPR, gives legal status to rights within its mandate. They are also addressed in the International Labour Organization Convention.

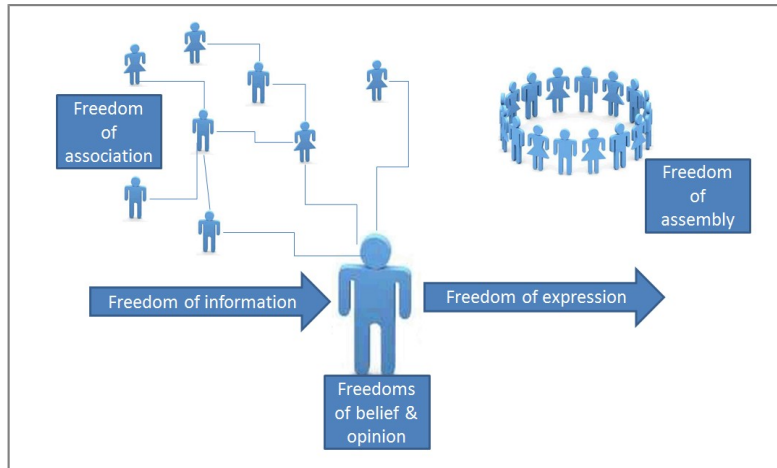
The UDHR and ICCPR elaborate on associational rights in some other areas, for example, through the right of religious believers to worship "in community with others" (Article 18 of the ICCPR) and the right of members of ethnic, religious and linguistic minorities to enjoy their own culture, religion and language "in community with the other members of their group" (Article 27 of the ICCPR).

In his 2012 report, the UN Special Rapporteur defines an **assembly**, for the purpose of the international rights regime, as "an intentional and temporary gathering in a private or public space for a specific purpose." The right of assembly is set out in Article 21 of the ICCPR, whose first clause states that "The right of peaceful assembly shall be recognized," subject only to some specified restrictions (see below).

Freedom of association and assembly do not stand alone but form part of a series of related rights concerning personal and social interaction which are conferred in both the UDHR and ICCPR, and are usefully considered in that context. These rights are:

- Freedom of belief ("thought, conscience and religion"), including the right to manifest belief (e.g. through worship and teaching) (Article 18 of the UDHR and ICCPR)
- Freedom of opinion (Article 19 of UDHR, 19(1) of ICCPR)
- Freedom of expression (Article 19 of UDHR, 19(1) of ICCPR)
- The right of access to information (implicit in Article 19 of UDHR, 19(1) of ICCPR)
- **Freedom of association** (Article 20 of UDHR, 22 of ICCPR)
- **Freedom of assembly** (Article 20 of UDHR, 21 of ICCPR)
- Freedom to participate in political and public life, including democratic elections (Article 21 of UDHR, 25 of ICCPR)
- Freedom to participate in cultural life and to use one's own language (Article 27 of UDHR, 27 of ICCPR).

The relationship between freedom of association, freedom of assembly and some of these other rights is illustrated in Figure 1 below.



As with other rights in the international regime, governments are required not only to refrain from interfering with or violating rights of association and peaceful assembly themselves (except in specific circumstances), but also to ensure that people are able to exercise them free of restraint by third parties.

These rights are not, however, unconditional. The right of assembly explicitly refers only to “peaceful assembly”. Regarding freedom of association, the ICCPR continues with the proviso that:

No restrictions may be placed on the exercise of this right other than those which are prescribed by 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.

Identical wording is used where freedom of peaceful assembly is concerned, other than the substitution of “in conformity with the law” for “prescribed by law”.

These provisos are similar to that relating to freedom of expression (see Module 2), and establish a similar test for the appropriateness of any limitation, i.e. that it is prescribed by law, that it relates to specified purposes (public safety, order, health, morals or the protection of the rights of others), and that it is necessary for such purposes. According to the UN Special Rapporteur, the requirement that restrictions can only be imposed in these circumstances represents a presumption in favour of peaceful assembly, with the implication that any restrictions imposed must be transparent, necessary, proportionate and liable to appeal. However, the interpretation of these restrictions – the nature of “peaceful” assembly, of threats to public order or morals, and the interface between the rights of different parties – has differed between national jurisdictions.

The impact of the internet on freedom of association and assembly

International rights instruments were agreed before the internet came into being. Their implications for the internet, and *vice versa*, have therefore been subject to debate and interpretation. The Special Rapporteur on freedom of assembly and association noted in his 2012 report that he intended to explore the impact of the internet on these rights more closely in future work.

The UN Human Rights Council agreed in September 2012 that ICTs had become important in protecting the rights of association and assembly, and called on states to “respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline.” It should be possible for people to exercise their rights equally online and offline, but in addition, the same restrictions on rights – those described in section 2 – should apply

online as they do offline. This still leaves considerable scope for interpretation, not least because the internet enables people to do some things online that were not possible offline. In particular, it has made it easier for them to exercise certain rights and also easier for those who wish to do so (whether governments, businesses or individuals) to violate the rights of others.

Three major impacts of the internet on association and assembly and their associated freedoms can be identified. These concern: a) association between individuals, b) collective association, and c) assembly.

The following paragraphs describe these in general terms. Some more specific issues are discussed in section 4.

The first major impact of the internet concerns the nature of **individual association** – personal and social interactions – which has been transformed for many internet users. At the time the UDHR and ICCPR were agreed, personal and social interactions were primarily conducted face to face, through written communications or through voice telephony. They were also largely conducted within specified geographies, either locally or within nation-states. Connectivity and the internet have enabled new platforms for personal and social interactions – particularly email, instant messaging and social network services (such as Facebook, LinkedIn and Twitter) – which are undertaken virtually, extending the range of and enabling new forms of association. Many individuals that are online now have much more complex sets of interpersonal relationships, with larger groups of people, in more locations (worldwide as well as local or national). They are able to conduct relationships instantaneously, through a variety of online devices, irrespective of distance, and they are able to do so anonymously or pseudonymously more easily than they could offline.

This has many implications for social relationships, within families, communities and other groups. It has greatly extended the ability of individuals to associate with others of their own choice, from a much wider range of potential associates. This has impacted in particular on individual “associations” within the family (described by the ICCPR and the ICESCR as “the natural and fundamental group unit of society”) and within diasporas. It has made it easier for individuals in minorities (including sexual minorities) to meet like-minded or similarly-oriented peers. It has also altered the nature of verifiability in individual associations (or “friendships”, as defined by online social networks), increasing scope for abusive as well as positive relationships.

The second major impact concerns the nature, and particularly the scope, for **collective association**. Much discussion of freedom of association and freedom of assembly concerns their significance in political organisation, particularly the organisation of protest and political dissent. While this is an important dimension of these rights, it is only one dimension. People have many different reasons for associating collectively, from personal friendship to community of interest, from solidarity to criminality. While oppressive governments or restrictive social norms may not be concerned about some of these – stamp collecting, say, or bird watching – they may be as interested in and hostile to trades unions, farmers’ cooperatives, or women’s, LGBT or faith groups, as they are in and to political dissenters, and may find them just as threatening.

The internet has changed the nature of interactions within associations of this kind. Where the internet is generally available, particularly in industrial countries where most people have access, it is now widely used as an organisational tool by formal and most informal associations. Websites provide an accessible public profile and are used to publish information, recruit supporters/members and run campaigns, at much less cost than was previously the case. Newsletters have often been replaced by online bulletins. Subscriptions have been automated as online transactions. Blogs and discussion forums have allowed more interaction within groups, particularly between individuals who cannot readily meet face to face. Consultation and voting processes can become accountable to wider groups of members.

These organisational changes are evident in political, politically active and human rights organisations as well as social organisations, trades unions, etc. They include politically diverse organisations: both President Obama's election campaigns and the Republican Tea Party movement, for example, are credited with making effective use of the internet for fundraising and campaigning in the United States. Rights professionals interviewed for an APC research project in 2012 described the internet as having had a transformative effect on their ability to publish advocacy and campaign material (and that of groups that they support), on facilitating networking amongst rights activists, and on building momentum for campaign activity – though they also felt that their use of it was insufficiently systematic or adventurous.

As well as facilitating offline associations, the internet has enabled the creation of associations that exist only or primarily online. **Online associations** are not bound by geographical boundaries in the same way as their offline counterparts, and enable looser forms of participation (including, if an association thinks it desirable, anonymous participation). Online association can be highly supportive for minorities, particularly those who face stigmatisation or victimisation in wider society, and can build momentum that supports greater inclusiveness. In political contexts, online associations have enabled the emergence of stronger global movements for change, and stronger linkages between domestic and diaspora political groups.

As with other impacts of the internet on rights, however, it should be remembered that internet technology can be used to abuse as well as to enable rights. Online association is used by organisations which are hostile to rights and social welfare as well as by those which support them – for example, by terrorist and criminal organisations, by the Ku Klux Klan as well as Human Rights Watch. This raises issues about the relationship between rights of association, security and law enforcement which are discussed in section 4.

The third major impact concerns **assembly**, i.e. the right of people to come together for a particular purpose, provided that purpose is peaceful – from family celebration to religious worship, in the dancehall, on the sports field or in political protest. Social gatherings are as much assemblies, in this context, as are demonstrations, and those of (ethnic, sexual and other) minorities in particular may be subject to violation, by non-state as well as state actors. The right of assembly therefore includes, but is not the same as, a right to peaceful protest.

The internet has enabled two major changes in the nature of assemblies. Firstly, alongside mobile telephony, it has altered some of the ways in which physical assemblies are organised and conducted. The most significant of these is that people involved in assemblies can now be in constant touch with one another both individually (through mobile voice) and collectively (through group SMS, group email and social network services, using mobile phones). The use of mobile phones and social networks to coordinate activity before and during protests has been credited with significant impact on uprisings within the “Arab Spring” and other political protests (see also below). The organisational value of mobile phones and social networks is relevant to both peaceful and violent assemblies, and to political groups of all persuasions. Micro-coordination by mobile phone and social networks is also evident in non-political assemblies, from organising “raves” to football violence.

As well as making it easier to coordinate physical assembly, the internet can also be said to have enabled a new range of activities which can be considered **online assembly**. The boundary between what is association and what is assembly here is naturally somewhat flexible. However, online assembly might include joint activity by groups of individuals sharing a common purpose or set of purposes, of a kind that would previously only have been possible by physical coordination. Online petitions might be considered online assembly, for example, as might campaigns which are organised through social networks such as Facebook and Twitter. Some political organisations, of both left and right, have proved adept at organising such campaigns, and they are proving increasingly influential on public discourse in some countries. Crowdsourcing – the gathering of information from uncoordinated online individuals to a central point, for example, in monitoring elections or corruption in public services – could also be considered online assembly.

A number of more specific points related to these general principles are considered in section 4.

Specific issues

The general impacts of the internet on association and assembly which are described above raise a number of specific issues. These will vary between countries, which have different political, economic and social structures, and over time, as changes take place in technology, adoption of the internet and mobile internet, and available applications. Participants in this training module should consider and compare how these broad changes, brought about by the internet, will affect the rights of association and assembly in their own contexts. This will be affected by wider aspects of the communications environment in different countries, including the spread of internet adoption, the diversity of online participation and the openness of the political culture to public engagement.

The following paragraphs raise three more particular issues which arise from them in most or all jurisdictions.

The first concerns the significance of the internet in the **organisation of protest**. As discussed above, one of the most visible applications of the internet to facilitate assembly in recent years has been the use of social network services such as Facebook and Twitter, alongside SMS, in organising political protests. The extent to which this has actually occurred is difficult to measure, and it is likely that there has been some exaggeration – street protests have been successful for generations, in the absence of social networks – but there is good anecdotal evidence from the Egyptian and Tunisian experience during the “Arab Spring” that Facebook, at least, has played a significant part. Online social networks have the capability of rapidly spreading information about when and where protest will occur among a pre-identified group of likely participants (though they will almost certainly also be followed by informers). SMS and Twitter are particularly effective tools for micro-coordination, alerting groups of participants to problems (such as the location of police or army units), organising snap activities or changing the time and venue of those that had been planned.

It has also been suggested that Facebook contributes to political movements by enabling people to participate passively – i.e. to register support on a social network rather than actively on the street. This solidarity participation may play a part in building the momentum of protest, bridging online and offline engagement in political activity.

There has been some discussion among rights professionals of the boundaries of protest, particularly online protest. In most cases, online campaigns, petitions and other activities have been analogous to offline association and assembly. In some cases, however, groups of internet activists have used their expertise to pursue political or campaigning objectives through means which have included hacking, to obtain information or alter the websites of governments or those with whom they disagree, and implementation of distributed denial of service attacks, which prevent internet users from accessing specific websites or groups of websites (including, for example, government services). Some within the internet community regard such activities as legitimate assembly which should be protected by the rights regime, while others consider them violations of both internet principles as well as the privacy, freedom of expression and freedom of association rights of others.

A second issue concerns the relationship between association, law enforcement and **surveillance**. While the internet makes it much easier for people to associate and facilitates assembly, as discussed in section 3, internet activity also leaves traces which can be followed by governments and non-state actors with the necessary skills. Surveillance mechanisms are used for law enforcement purposes such as crime detection in all countries, subject to differing legal constraints. Surveillance mechanisms can also be used by governments to monitor or suppress political dissent or the behaviour of associations such as those of sexual minorities or faith groups. Non-state actors can also engage in surveillance of those whose views or behaviour they oppose, in concert with or against the wishes of governments.

As well as enabling greater freedom of association and assembly, the internet has therefore made it easier for repressive governments and others to monitor and gather information about associations which they consider undesirable. Many individuals are less cautious with their personal information online than they are offline. As a result, in the words of one rights professional interviewed by APC, “In the past, the secret police would need to invade your property or arrest and interrogate you in order ... to identify your associates; now all they need to do is look at your Facebook page.” Many governments have sought or obtained the right to access the internet records of individuals and organisations from internet service providers (ISPs) and online service providers (OSPs).

Even the threat of this can have a chilling effect on freedom of association. The mechanisms which can be used by governments for surveillance of online behaviour for purposes of political repression are very little different from those which would be used for crime detection. They also raise issues concerning the rights to privacy and data protection, including the relationship between the state and private companies (ISPs and OSPs) which hold personal data.

The third issue concerns the role of **anonymity and pseudonymity** in online expression and association. These can serve very different purposes. Most rights activists have supported anonymity and pseudonymity, because they can enable people to take part in online activity which opposes either their government or a non-state actor (such as a drug cartel) without risking arrest or retribution. In such high-risk situations, anonymity and pseudonymity facilitate solidarity and the organisation of covert opposition (association or assembly) which can help to bring about improvements in human rights or personal security for both individuals and communities. On the other hand, anonymity and pseudonymity are also used by those who seek to harm individuals or society, most obviously in online fraud and the sexual grooming of children. These challenges need to be considered alongside the positive role which anonymity and pseudonymity can play.

Summary

Freedom of association and freedom of peaceful assembly are conferred by the international rights regime subject to certain specified limitations. These include the right of individuals to associate with one another, to work together in groups of their own choosing, and to organise collective activity, including protest. The rights regime also defines specific rights of association and assembly for particular religious and minority groups and trade unions.

The internet has greatly enhanced the ability of individuals to associate with other individuals, to form and work in collective associations and to undertake collective activity including protest. This has facilitated the exercise of other rights, such as freedom of expression and rights of cultural identity. However, the internet’s ability to facilitate association and assembly can also be used to contravene the rights of others.

The nature of the internet means that it is possible for governments to introduce more effective surveillance of social and political groups, which can be used to facilitate repression. The relationship between the internet, association and assembly is therefore complex, and poses new challenges for the enjoyment, exercise and enforcement of the rights set out in the international regime.