



## JOINT DECLARATION ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND DEMOCRATIC GOVERNANCE

**The United Nations Special Rapporteur on Freedom of Assembly and Association<sup>1</sup>, the InterAmerican Commission for Human Rights<sup>2</sup> (IACHR) and its Special Rapporteur on Freedom of Expression<sup>3</sup>, Special Rapporteur on Human Rights Defenders and focal point for reprisals in Africa of the African Commission on Human and Peoples' Rights<sup>4</sup> (ACHPR), and the OSCE Office for Democratic Institutions and Human Rights (ODIHR);**

*Underscoring* the importance of the right to freedom of peaceful assembly as an essential component of democratic governance, as a means of expression, and as a key enabling right supporting the full enjoyment of civil, political, economic, social and cultural rights;

*Reaffirming* that the right to freedom of peaceful assembly provides individuals with invaluable opportunities to express political, social and cultural opinions, values and perspectives, and enables people to come together to shape their own futures;

*Stressing* that the right to freedom of peaceful assembly closely overlaps, intersects and complements the rights to freedom of association, expression, and participation in public affairs, among others;

*Celebrating* the many achievements of civil society and social movements in support of democracy and the realization of human rights, and the role peaceful assemblies have played in those achievements;

*Celebrating* in particular the achievements of women-led movements and organisations, which are at the forefront of today's most pressing global struggles;

*Taking note* of the extensive protests that have occurred over the past several years, and protesters' concerns with discrimination, inequality, limitations on democratic and inclusive governance, absence or erosion of the rule of law, serious harms arising from climate change, corruption, and violations of civil, political, economic, social and cultural rights;

*Expressing grave concern* at a global trend of repression of peaceful assemblies, including the unjustified and disproportionate use of force by law enforcement officials, mass and arbitrary detentions, retaliatory violence and intimidation, at times amounting to gross human rights violations;

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<sup>1</sup> Mr. Clément Voule

<sup>2</sup> Commissioner Joel Hernandez

<sup>3</sup> Mr. Pedro Vaca

<sup>4</sup> Hon. Rémy Ngoy Lumbu

*Sounding alarm* concerning many restrictive measures taken by governments under the pretext of containing and stopping the COVID-19 pandemic without considering their negative impact on the rights to freedom of peaceful assembly and of association, and on civic space and participation in the conduct of public affairs, as well as the abuse and misuse of public health measures to silence dissent in many countries;

*Concerned too* by the adoption of legislation and regulations that impose undue restrictions, including blanket bans, on freedom of peaceful assembly particularly during the COVID-19 pandemic, and by the negative impacts on democratic governance caused by such legislation;

*Condemning* attempts by some governments to suppress assemblies through such measures as: disproportionate and unjustified application of criminal and administrative sanctions against organizers of and participants in peaceful assemblies, including collective punishments; stigmatization and intimidation of assembly participants and their family members, including through official statements and media reports; intimidation, harassment, sexual violence and rape against women protesters; mass surveillance operations against protesters; Internet shutdowns and bandwidth throttling aimed at precluding the organization of assemblies; and violence against and undue restrictions on the work of journalists, assembly monitors and other assembly observers;

*Alarmed at* reports of agents provocateurs inciting or committing acts of violence in the context of peaceful assemblies;

*Concerned further* by the negative perception of peaceful protests by some state authorities, prominent public figures and media outlets, as well as by the fact that, where voices are not heard and the root causes leading to protests are not addressed, social tensions and social exclusion are likely to increase, together with the potential for violence and further human rights violations;

*Reiterating* that States are under a positive obligation to provide an enabling environment, including in times of crisis, for freedom of assembly, including by taking steps to ensure peaceful assemblies can occur freely and without undue restrictions, and by ensuring that assemblies are protected from attacks including from counter-demonstrators;

*Acknowledging* the important role played by the Internet and other information and communication technologies in supporting individuals' ability to organize assemblies and to ensure that rights are respected in the context of assemblies, while also *drawing attention* to the fact that new technologies may be and have been used to restrict the right to freedom of peaceful assembly and to track demonstrators and political opponents; *Acknowledging* the important role of private companies in protecting and facilitating the enjoyment of freedom of assembly online and other democratic rights, based on their due diligence as stated in the UN Guiding Principle on Business and Human Rights;

*Welcoming and encouraging* efforts by the international community aimed at supporting the right to freedom of peaceful assembly;

*Inviting* States and the international community to regard peaceful assemblies, including mass protests, not as a threat to national security and public order or as a disturbance of national economic development, but rather as an opportunity to develop more inclusive and democratic polities;

*Underscoring* the importance of the creation of the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association through HRC Resolution 15/21 as well as the continued focus by the Human Rights Council on peaceful protests (Res. 44/20), and *affirming* the important work done to protect those rights at the international and regional level, including through the General Comment 37 issued by the Human Rights Committee in July 2020, the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly and on Freedom of Association, the Inter-American Commission on Human Rights' report on Protest and Human Rights, and the African Commission on Human and Peoples' Rights' Guidelines on Freedom of Association and Assembly in Africa;

*Encouraging* States to extend invitations to and facilitate visits by international and regional human rights mechanisms, with the purpose of assessing the situation on freedom of assembly, including through assembly monitoring, with a view to strengthen protection for those exercising these rights as well as ensuring accountability for violations of these rights and proposing changes to laws and policies, and *reaffirming* the commitment of international and regional human rights mechanisms to provide assistance to States working to ensure fulfilment of the right to freedom of peaceful assembly;

*Adopt*, on \_9\_ December 2020, the following Joint Declaration on the Right to Freedom of Peaceful Assembly and Democratic Governance\*\*\*:

1. General Principles:

- a. States must pursue an approach based upon the principle that freedom of peaceful assembly is a fundamental right and not a privilege. States must respect and ensure the rights of all persons participating in assemblies without discrimination on any grounds.
- b. Full exercise of the right must be the norm; the right may only be restricted where the test for the implementation of restrictions under international law is met, namely that the restrictions in question are provided for by law, serve a legitimate interests recognised by international human rights law, and are a necessary and proportionate means of protecting that interest.
- c. The right to freedom of peaceful assembly is closely linked to other rights, including the rights to freedom of association, expression, and participation in public affairs. Together with such other rights, peaceful assembly constitutes one of the foundations of a system of participatory governance in which the values and principles of democracy, human rights, the rule of law and pluralism are fully ensured. States must ensure all rights are fully protected in the context of peaceful assemblies.
- d. The peacefulness of an assembly must be presumed, and the term “peaceful” must be interpreted broadly and exclude only acts of widespread and serious violence that cannot be isolated from the assembly.
- e. Force must not be used unless strictly unavoidable, and where employed must be limited in accordance with the requirements imposed by international human rights law, including international norms and standards on the use of force.
- f. Protecting health, security and public order are not incompatible with the exercise of the right to peaceful assembly. Crisis situations, including public health emergencies, must not be used as a pretext for rights infringements and the imposition of undue restrictions on public freedoms. In particular, blanket bans of assemblies are likely to constitute an unnecessary and disproportionate infringement of the right, even in emergency situations.
- g. Individuals must be free to participate in shaping decisions that will effect them and in policy formation during times of crisis as at other times; public participation is crucial to surmount any crisis, and civil society must be regarded as an essential partner of governments in this endeavor.

2. Enabling Environment for Freedom of Peaceful Assembly:

- a. States have a positive obligation to promote the right to freedom of peaceful assembly. This requires States not merely to refrain from interfering with assemblies, but also to take positive steps to enable individuals to express their views, including through protecting assemblies from attacks by third parties and by otherwise facilitating the ability for the right to freedom of assembly to be exercised.

- b. Many states employ a restrictive, command and control-style approach to freedom of peaceful assembly. In contrast, states should employ a facilitative approach. The full enjoyment of the right to freedom of peaceful assembly is not compatible with authorization regimes, in which assemblies must obtain official approval in order to be able to proceed free from the imposition of penalties or dispersal. Notification regimes must not in practice function as authorization systems. To the extent the law suggests that assembly organizers provide the authorities prior notification, the purpose of that notification should be to enable the State to put in place necessary arrangements to facilitate the exercise of the right to freedom of peaceful assembly and to protect participants, public order, public safety and the rights and freedoms of others. Spontaneous assemblies should also be facilitated as not all assemblies are pre-planned and events may not leave time to notify. Failure to notify should never render a demonstration unlawful and never justifies the dispersal of an assembly or the arrest of participants.
- c. Rather than focusing on controlling assemblies, legislation concerning assemblies should be aimed at ensuring the exercise of the right to freedom of peaceful assembly, including by restricting the ability of the authorities to ban or impose limitations on assemblies.
- d. Administrative requirements for holding an assembly must not be overly burdensome, and the authorities should ensure any decision-making processes, and the results of those processes, are publicly accessible, clearly explained on the basis of rights-compliant reasoning, and open to legal challenge.
- e. The principle of individual responsibility should always be respected; in no circumstances should organizers of or participants in peaceful assemblies be held responsible for the actions of others or their unlawful conduct.
- f. In accordance with their role providing access to information and ensuring public accountability, media access to and ability to provide coverage of assemblies must be assured. States must ensure that journalists, media workers and others reporting on protests are not arrested, intimidated, threatened, or assaulted, that their equipment is not confiscated, that their photographs, audio and video recordings are not tampered with, and that their rights are not limited or violated as a result of their carrying out their tasks. Members of civil society, including national and international human rights organizations and first-aid workers must also be provided access to assemblies. Legal professionals defending those exercising the right to freedom of peaceful assembly play a crucial role in guaranteeing the effective enjoyment of freedom of assembly, and must be protected from harassment, intimidation and prosecution resulting from providing legal counsel to detained individuals in the context of assemblies.
- g. States must refrain from using information and communication technology to intimidate, harass or otherwise deter individuals from exercising their right to freedom of peaceful assembly, including through the spreading of disinformation, targeted harassment, mass surveillance, and the generalized use of facial recognition technology.
- h. States must prohibit assemblies which have the explicit, unequivocal purpose of advocating national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, or promoting war propaganda. Where an individual or small group is engaged in such action in the context of an assembly, action taken in response must be targeted against that individual or small group only.
- i. States should publicly recognize the crucial role that women's organizations and movements, including women human rights defenders, play in the advancement of democracy, peace and development, and should encourage and facilitate women and girls' participation in public life, including by combatting discriminatory social norms, attitudes and harmful stereotypes about women's and girls' roles that

augment discrimination against them, discourage their involvement in public life, and limit their ability to exercise their right to freedom of peaceful assembly.

### 3. Spaces of Assembly

- a. The right to freedom of peaceful assembly is a key right; all decisions that impact on the right must be taken with full regard to its individual and social importance. An assembly should not be banned or dispersed merely on the basis that it temporarily interferes with commercial activities or the free flow of traffic.
- b. Facilities ordinarily accessible to the public that are buildings or structures—such as publicly owned auditoriums, stadiums or other buildings—should also be regarded as legitimate sites for public assemblies.
- c. States must refrain from physical installations or urban redesign measures aimed at minimizing the possibility for large public assemblies to take place, including the construction of walls or the destruction or rendering inaccessible of large public spaces, especially sites where public assemblies have historically taken place and sites of particular political significance.
- d. Private ownership of a space does not automatically and necessarily grant the owner the ability to prevent public assemblies from taking place in that space. Rather, several factors must be borne in mind in reaching an appropriate determination in such contexts, including: whether the space is generally accessible to the public; the extent to which public spaces are available more broadly; whether the space in question was formerly public space that was privatized; the nature and extent of the potential interference caused by the gathering with the interests of others with rights in the property; whether the ownership of the space is contested through the gathering; whether participants have other reasonable means to achieve the purpose of the assembly, in accordance with the sight and sound principle; whether the space in question bears particular political, social or cultural significance; and whether the ownership of the space is contested by indigenous peoples. Access may not be denied on a discriminatory basis.
- e. States must ensure that assembly participants are able, to the extent possible in light of other legitimate concerns recognized by international human rights law, to conduct their assemblies within “sight and sound” of their target audience.
- f. The right to freedom of peaceful assembly also applies to online spaces and the use of information and communications technology. States must refrain from restricting access to the Internet, specific websites or telecommunication networks for the purpose of preventing peaceful assemblies. States must also refrain from measures that restrict the right to assemble online, including monitoring social media and communications technology in order to compile databases of participants in peaceful assemblies.
- g. In times of public health crisis such as that faced in the context of COVID-19, when access to physical assemblies may be restricted, it is all the more necessary that access to and use of the Internet be ensured. In addition to refraining from restrictions such as Internet shutdowns, bandwidth throttling or online censorship, States should take measures to ensure that access to the Internet extends to the entirety of the population, and that it is affordable. States must ensure that civil society organizations can participate in policy development via online fora when in person participation is impossible or insufficient. In all cases, ensuring the rights to peaceful assembly online requires that individuals’ rights to privacy are fully respected and protected.

### 4. The Role of Law Enforcement During Assemblies:

- a. Restrictions may only be imposed in the course of an assembly where rigorously justified on the basis of convincing and compelling evidence, and in accordance with the principles of legality, legitimate aims, necessity and proportionality.
- b. Systematic stop and search is prohibited, and constitutes a violation of both the right to freedom of peaceful assembly and the right to privacy. Stop and search measures may only be utilized in exceptional cases, where there is credible information indicating a clear threat of imminent violence. In this context, states must ensure any measures taken do not have discriminatory impact.
- c. Law enforcement command structures should be clearly established, and law enforcement agencies should establish a clear channel through which protesters can contact them before or during an assembly. Law enforcement officials should be clearly and individually identifiable with a name or personal service number tag visibly displayed on their uniform or gear. Any deployment of plain-clothed officers in assemblies must be strictly necessary in the circumstances and such officers must never incite violence. Before conducting a search, making an arrest or resorting to any use of force, plain-clothed officers must identify themselves to the persons concerned.
- d. Mediation or negotiation are key techniques to be employed to address tensions that arise in the course of assemblies, before resorting to any other option. In their response to any given situation, law enforcement agencies must consider that overly rigid enforcement of regulations and orders as well as zero-tolerance approaches are likely to worsen already tense situations and may contribute to public disorder and even violence.
- e. Dispersal must not occur unless law enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm and unless there is a clear danger of imminent violence. Only government authorities or high-ranking officers with sufficient and accurate information concerning the situation unfolding on the ground should have the authority to order dispersal. If dispersal is deemed strictly unavoidable, assembly participants should be clearly and audibly informed, and given reasonable time to disperse voluntarily. Any use of force must comply with the principles of legality, necessity, proportionality, precaution and non-discrimination. *Inter alia*, compliance with these principles requires law enforcement officials to take all necessary precautions to avoid and to minimize the use of force, and that only the minimum force necessary ever be used. Force likely to cause any form of harm or injury, including less-lethal weapons, should not be used to overcome passive resistance to official orders.
- f. Law enforcement officials should strictly comply with the use of force principles and standards on the policing of assemblies laid out in the *UN Code of Conduct for Law Enforcement Officials*, the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, and the *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*.
- g. In times of public health emergencies such as during the COVID-19 pandemic, law enforcement officials managing assemblies and any detained individuals must be provided with personal protective health equipment to ensure their right to health is respected. Any determinations made relative to assemblies—including for instance whether or not to use tear gas—must be made with background health risks and vulnerabilities borne fully in mind. It is also particularly vital to avoid mass arrests, where physical distancing is difficult to ensure and health risks will be heightened.
- h. The military should not police assemblies. If members of the military are deployed to police assemblies, in exceptional circumstances where this becomes necessary, they should be considered law enforcement officials, subject to civilian control and to all of the standards on use of force by law enforcement officials detailed above.

5. Duty to respond to public demands:

- a. Those taking part in protests around the world have called for respect for their civil, political, social, economic and cultural rights, democratic governance and political inclusion, racial, gender and other forms of equality, more equitable social systems, transparency and accountability, and action to combat climate change and other environmental harms. States' duties in the context of freedom of assembly are not limited to respecting the right itself. In addition to ensuring that assemblies may occur free from undue restraint, States should take meaningful action in response to such calls, and in particular must take steps to amend law and policy in accordance with all calls that are compatible with and would lead to greater respect for, protection and fulfillment of human rights.
- b. Evidence to date indicates that the COVID-19 crisis and the measures states have taken in response are exacerbating many of the underlying situations of injustice, inequality and suffering that led to pre-COVID-19 protests. It is vital that States reverse course and take public demands for greater rights fulfillment fully into account, including by adopting more democratic institutions, taking concrete measures to reduce discrimination, poverty and inequality, and ensuring a transition to more sustainable energy sources.
- c. Peaceful assemblies constitute a key component of democratic governance, and an invaluable tool through which to ensure policy formation in the interest of the public good. In accordance with such recognition, State representatives should publicly underscore their respect for the importance of the right as well as their commitment to a free and democratic society and mode of governance, and engage with organisers and participants in an open, consultative process aimed at responding to their concerns.

6. Accountability for Human Rights Violations in the Context of Protests:

- a. State authorities must comply with their legal obligations and must be held accountable for any failures to do so.
- b. Participants in assemblies must have clear and effective avenues to bring legal action against authorities where their right to freedom of peaceful assembly is infringed, including in cases involving the illegitimate banning or imposing of restrictions on assemblies; violence or retaliations against assembly participants, their family members, journalists or observers; mass surveillance; harassment; and public defamation and smear campaigns.
- c. Where individuals whose rights have been violated cannot afford legal representation, legal aid should be provided. Where large-scale violations have taken place, a form of redress suitable to the widescale nature of the harm and capable of providing redress to the entirety of the community whose rights were violated should be provided.
- d. States should ensure that prompt, transparent, independent, impartial and effective investigations follow every decision by law enforcement officials to use force, especially in cases where it is alleged or there are reasons to believe that, in the course of or as a means of dissuading participation in an assembly, any person was physically injured or deprived of their life, or that they were subjected to sexual or gender-based violence. The absence of a formal complaint does not justify lack of investigation by authorities. If the force used was not authorized by law, was not strictly unavoidable, was not proportionate, or was otherwise in violation of international human rights law, including international norms and standards on the use of force, law enforcement personnel should face civil and/or criminal liability, as well as disciplinary action.
- e. All participants in assemblies must be protected against violence, intimidation, harassment, surveillance and reprisals. State and non-State actors who commit, advocate or support acts of

violence against persons and groups exercising their right to freedom of peaceful assembly must be held accountable for such violations. Smear campaigns and online harassment against persons and groups exercising their right to freedom of peaceful assembly should be publicly condemned.

- f. Where large-scale violations are alleged, including where violations have been committed against multiple assemblies, a comprehensive, independent commission of inquiry should be established, including genuine, diverse, independent representatives of civil society, with a mandate to conduct fact-finding as well as to make recommendations for systemic reform.
  - g. All those whose rights are violated in the context of assemblies must be provided comprehensive and effective remedies for the harm they have suffered, including through restitution, compensation, satisfaction and guarantees of non-repetition.
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