



## JOINT DECLARATION ON PROTECTING THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN TIMES OF EMERGENCIES

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

*Recalling and reaffirming* their Joint Declarations on protecting and supporting civil society at-risk of December 2021, and on the right to freedom of peaceful assembly and democratic governance of December 2020;

*Underscoring* the importance of the right to freedom of peaceful assembly as an essential component of democracy, allowing and empowering everyone in the society, including women, men, young people, children, and persons with disabilities, without discrimination, to participate in decision-making and policy-making processes and shaping their own future; and further *underscoring* the importance of the right to freedom of peaceful assembly during emergencies;

*Stressing* further that the right to freedom of peaceful assembly is a fundamental key right enabling the full enjoyment of civil, political, economic, social and cultural rights;

*Reaffirming* that the right to freedom of peaceful assembly can be expressed in different forms, including peaceful protests and strikes, and that it is an important means of expression, providing individuals and groups with invaluable opportunities to express their opinions, concerns and dissent, to pursue more just, peaceful and egalitarian futures, and to promote more accountable governance;

*Recognizing also that* the right to freedom of expression protects the right to gather, record and disseminate information related to assemblies, including the actions of State agents and law enforcement authorities; that journalists should not be detained, harassed or attacked for their work, and their equipment and materials cannot be retained, confiscated, or destroyed; and *reaffirming* that States must afford journalists the highest degree of protection in order for them to perform their work freely and safely;

*Underlining* the importance of full respect for and protection of the right to freedom of peaceful assembly at all times, including during crisis and emergency situations, such as during health pandemics, climate crises, armed conflict, social and political unrest, or other security-related crises; and *acknowledging* that this enables the inclusion and participation of individuals and groups, especially marginalized groups and those affected by the emergency, to contribute to achieving human-rights oriented and sustainable policies and reforms that better address the needs and aspirations of communities;

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<sup>1</sup> Mr. Clément Voule.

<sup>2</sup> Mr. Pedro Vaca.

<sup>3</sup> Hon. Rémy Ngoy Lumbu.

*Reaffirming* the essential role of peaceful assemblies in advancing peace, security and development;

*Further underlining and recognizing* the important role civil society, activists as well as social movements, have had in the past and continue to play today, including in various emergency situations, in protecting, advancing and strengthening human rights;

*Recognizing also* the essential role of civil society, human rights defenders and social movements in recovering from emergencies; such as for building back better and ensuring a human rights-oriented recovery from the COVID-19 global pandemic;

*Underscoring* the important role of women-led movements in mobilizing for democracy, justice, equality, and in conflict prevention, conflict resolution, and post-conflict reconciliation and rehabilitation;

*Taking note* of the frequent assemblies, such as protests around the world in response to the compounded crises and emergencies; and *celebrating* the bravery of individuals and groups who have protested against rising authoritarianism, military coups and military occupation and have called for an end of armed conflicts;

*Commending* further activists for utilizing different peaceful means, online and offline, to overcome severe and rights-violating restrictions imposed by States on the right to freedom of peaceful assembly, including by using civil disobedience, strikes, art (music, painting, murals and other) and other non-violent tactics to express their views and mobilize communities;

*Condemning* attempts by some governments to suppress peaceful assemblies during emergencies, including by imposing blanket bans or disproportionate restrictions on peaceful assemblies;

*Expressing* grave concern about the abuse of emergency measures adopted by States in response to emergency situations, aiming to prevent the organization of and/or repress peaceful assemblies, the utilization of the military in policing peaceful protests in emergencies and the militarization of law enforcement officials, the misuse of emergency measures to resort to unjustified and disproportionate force by law enforcement officials, and/or to conduct mass and arbitrary detentions prior, during and after assemblies; further *expressing* concern at the imposition of states of emergency in response to and also during some assemblies, and the resulting foreclosure of possibilities for dialogue and dissent;

*Expressing* further concern at the disproportionate impact of COVID-19 emergency measures on the right to freedom of peaceful assembly worldwide, and *underlining* the responsibility of governments to review and ensure that adopted emergency measures have not resulted in imposing undue restrictions on the right to freedom of assembly and the overall civic space;

*Deploring* serious human rights violations and attacks against individuals organizing or participating in assemblies, committed frequently during emergencies by both State and non-State actors, including killings, extrajudicial executions, enforced disappearance, persecution, hostage taking, sexual and gender-based violence, arbitrary arrests and detention, torture and inhuman and degrading treatment;

*Condemning* frequent impunity for such crimes, and *emphasizing* that many of the above violations may amount to war crimes when committed in the context of armed conflict or/and crimes against humanity;

*Cognizant* of the widespread stigmatization, threats and violence against activists, human rights defenders, civil society actors, journalists and bloggers, as well as lawyers and medics, in the context of peaceful assemblies which increase particularly during emergencies;

*Deeply concerned* about the significant number of activists and journalists forced to flee from various countries due to threat of reprisals and punishments for their involvement in peaceful assemblies, or because of their work covering protests and reporting on human rights violations in that context;

*Recognizing* the specific and differentiated risks, barriers, attacks and impacts faced by women in exercising their right to freedom of peaceful assembly, including sexual and gender-based discrimination and violence, intimidation and harassment, online and offline, and the intensification of such factors in times of emergency;

*Recognizing also* the differentiated risks and additional challenges faced by LGBTI individuals when exercising their right to freedom of peaceful assembly, including facing sexual and gender-based discrimination, intimidation and violence, as we note that pre-existing or emerging discrimination and xenophobia against LGBTI people are aggravated during emergencies;

*Deeply concerned* furthermore at the weaponizing of courts during emergencies and the use of existing or new restrictive and vague laws to silence protestors and activists through criminalization and the imposition of disproportionate sentences, often in trials lacking respect for fair trial and due process rights obligations, including through military trials and forms of collective punishment;

*Reaffirming* the important role played by the Internet, social media and other information and communication technologies in providing space for individuals and groups to mobilize and to organize assemblies, especially when physical assemblies may face legitimate restrictions due to the emergency situation; further however *noting* that the access to online spaces to assemble and voice opinions, does not justify undue restrictions on offline assemblies;

*Condemning* the imposition of internet or communications shutdowns and from using technologies to commit rights violations in the context of assemblies;

*Stressing* the need for private companies, in compliance with human rights law and the UN Guiding Principle on Business and Human Rights, to protect and facilitate the enjoyment of the right to freedom of peaceful assembly online, including by ensuring their platforms are not used to spread hate speech and incite violence against activists, organizers or participants in assemblies;

*Welcoming and encouraging* efforts by the international community aimed at supporting the right to freedom of peaceful assembly, *recalling* the renewal of the mandate of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association through Human Rights Council Resolution 50/L.20 and the focus by the Human Rights Council on peaceful protests in Resolutions 50/L.16 and 44/20, and *affirming* the important work done to protect those rights at the international and regional level, including through General Comment 37 issued by the Human Rights Committee in July 2020, the report by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to the Human Rights Council dedicated to “Protection of human rights in the context of peaceful protests during crisis situations”, and his ten guiding principles to States when responding to the COVID-19 pandemic, the OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly, 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;

*Calling* on States to fully comply with their human rights obligations during emergency situations, including with reference to the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the Geneva Conventions of 1949 and their Additional Protocols; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance; the Convention relating to the Status of Refugees and its Protocol; UN General Assembly Resolution 60/1; Security Council resolutions related to women, peace and security which aim at promoting women participation in peacemaking and peacebuilding and at preventing and addressing conflict-related sexual violence - 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015), 2467 (2019) and 2493 (2019); the Human Rights Committee’s General Comment No. 37 of 2020 on the right of peaceful assembly (article 21); and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, as well as with reference to regional treaties, including the American Convention on

Human Rights, the African Charter on Human and Peoples' Rights and its Maputo Protocol, and the European Convention for the Protection of Human Rights and Fundamental Freedoms;

*Adopt*, on 15 September 2022, the following Joint Declaration on protecting the right to freedom of peaceful assembly in times of emergencies:

### **General Principles**

1. Even in times of emergency, overall respect for the rule of law principles should be ensured and political pluralism and the independence of civil society and the media must also continue to be respected and protected.
2. Public emergencies must not be used as a pretext by States to infringe the right to freedom of peaceful assembly or to repress civil society activists. Blanket bans on assemblies almost always constitute a disproportionate restriction of this right, and should be avoided.
3. The peacefulness of an assembly must be presumed; isolated violent acts do not render an assembly as a whole unpeaceful or unlawful.
4. Measures taken by States during public emergencies must comply with international human rights law requirements and standards, including the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.
5. Emergency measures may be imposed only in exceptional circumstances, where there is a serious, imminent danger that threatens the life of the nation. States must ensure that emergency measures are: i) strictly necessary, based on an objective and rights-based assessment of the exigencies of the situation; ii) proportionate to the aim pursued; iii) temporary and time-bound; iv) should be non-discriminatory and must not be inconsistent with other obligations arising under international law, including international humanitarian law and international refugee law; and iv) subject to ongoing legislative and judicial oversight and review, as well as review through inclusive, participatory processes involving civil society.
6. At all times, even when a state of emergency is declared, States must ensure that any response to assemblies does not infringe the right to life, the right to be free from torture or cruel, inhuman or degrading treatment or punishment, the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation, the right to recognition of everyone as a person before the law, the right to be free from arbitrary deprivation of liberty, the principle of non-refoulement and the right to have, adopt or change a religion or belief; and States must always provide effective remedy when such violations occur, respect the fundamental principles of a fair trial, and ensure fundamental guarantees against arbitrary detention, including the right of arrested or detained persons to be brought promptly before an independent and impartial judicial authority.
7. States should refrain from using legitimate institutional mechanisms in an arbitrary, selective or abusive manner against certain individuals or groups in order to limit or restrict their right to freedom of peaceful assembly, of association, and of expression on matters of public interest.
8. 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, should be prohibited. Where an individual or small group is engaged in such action in the context of an assembly, States should take targeted action against that individual or small group only.
9. In times of armed conflict, both international human rights law and international humanitarian law apply in complementarity.

## **Respecting, protecting and facilitating assemblies during emergency situations**

### ***States should:***

10. Protect public discourse and fundamental freedoms in times of emergency and provide the necessary guarantees for citizens to publicly express themselves. States should abstain from viewing assemblies and protests as a threat, and should recognize their fundamental value to society, including during emergency situations.
11. Refrain from stigmatizing peaceful assemblies or engaging in smear campaigns or hate speech against protest organizers and activists, and act promptly to address any such acts, whether committed by State or non-State actors.
12. Neither employ or support agents provocateurs nor organize counter-protests.
13. Refrain from involving the military or militarized law enforcement in policing assemblies, including during emergencies, as the involvement of such forces increases the risk of human rights violations.
14. Take proactive measures to increase preparedness, including by enhancing the capacity of civilian law enforcement and training them in the facilitating of peaceful assemblies in different emergency contexts, in negotiation techniques and in modes of de-escalating violence, and provide law enforcement with such protective equipment as is necessary in the particular emergency situation.
15. Furthermore, provide law enforcement responsible for policing assemblies with clear protocols and guidance on the use of force, in accordance with 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. Such protocols must take into account a gender perspective and address the specific needs of different groups, including children, persons with disabilities and others present at the assembly, taking into account the emergency context.
16. Ensure law enforcement officers have a clear command structure which is key for accountability and to enhance protection in the context of assemblies. Any decision to disperse an assembly or authorization of the use of force should only be taken by a high-ranking civilian authority.
17. Ensure, where, in exceptional emergency circumstances, armed forces are deployed to police assemblies, that they have received human rights training and especially in assembly facilitation and de-escalation techniques, and that they are placed under civilian command and oversight, have clearly defined responsibilities and rules of engagement, and are accountable.
18. Ensure that any force in the context of assemblies, including in emergency situations, is only used in line with the principles of legality, necessity, and proportionality. When necessary to disperse an assembly, ensure that law enforcement take all precautionary measures to minimize the harm such force is likely to cause to the protesters, bystanders, journalists or monitors, including the use of less lethal weapons such as tear gas, rubber bullets and other types of equipment of indiscriminate nature. Further, law enforcement agencies should ensure the use of force does not aggravate or escalate the situation, considering the context of the emergency. Particular care must be exercised by law enforcement when dispersing assemblies comprised of children, pregnant women, persons with disabilities and elderly individuals.
19. Further ensure that any measures taken in response to assemblies—including whether or not to detain individuals and whether to use tear gas—are made in light of and with the aim of protecting the health of all individuals, and after an assessment of relevant vulnerabilities and risks, taking into account the aggravated factors of the emergency. Avoid at all times conducting mass arrests in relation to assemblies, as especially during a public health emergency, such measures increase the health risks to arrested individuals.

20. Ensure that excessive force is never used, regardless of the emergency, and that force is never used to inflict punishment or reprisals against members of assemblies, journalists, monitors or medical staff. Further prevent the misuse of chemical agents in relation to assemblies, given their indiscriminate nature and potential to cause serious health impacts, including severe, long-term pain, suffering, or even death. Chemical agents must not be used in enclosed spaces or residential areas. The use of unlawful or disproportionate force, including of less lethal force against individuals, may constitute torture as well as cruel, inhuman and degrading treatment.
21. Refrain from the use of firearms when policing assemblies. Ensure law enforcement authorities are equipped with less lethal weapons, which may only be used as a measure of last resort, while taking all precautions to minimize harm.
22. Regulate the use of force in relation to peaceful assemblies during situations of armed conflict and military occupation, in line with international human rights law.
23. Provide clear limitations on the use of lethal and less-lethal weapons, and refrain from granting law enforcement agents unrestricted power, including in emergency situations. Never give orders authorizing “all necessary measures” for dispersing assemblies, as such broad orders in effect constitute an authorization for extrajudicial killings.
24. Recognize the important role of journalists, monitors, lawyers and medics in relation to assemblies, protect them from attacks and facilitate their work in relation to assemblies. Persons involved in monitoring or reporting on protests must not be prohibited from, or unduly limited in, exercising those functions, including with respect to monitoring the actions of law enforcement officials, including in situations when assemblies are declared unlawful and dispersed; and given their important role in the context of assemblies, regard these actors as essential during emergencies, including during health pandemics, and exempt them from movement restrictions.
25. Comply with international human rights obligations when using surveillance technologies, and refrain from using such technologies, including spyware or face recognition technology, to identify and threaten, attack, criminalize or otherwise attempt to deter peaceful assembly organizers and participants. Surveillance of protesters creates a climate of fear and has a chilling effect on the right to freedom of peaceful assembly.
26. Refrain from prosecuting participants in assemblies in military courts and respect their rights to habeas corpus, due process, equality before the law and a fair trial by an independent and impartial court, including during a state of emergency or armed conflict.
27. Refrain from imposing any penalties on individuals on the basis of their organization of or peaceful participation in assemblies as such. The imposition of the death penalty against activists in relation to their participation in assembly constitutes a serious violation of the right to life and the right of freedom from torture or cruel, inhuman or degrading treatment or punishment; any authorities enacting such a penalty must themselves face full accountability.
28. Ensure respect for and the protection of human rights in the context of assemblies by all actors, including occupying State forces or similar, as well as non-State actors exercising government-like functions and control over a territory.
29. Cooperate in all circumstances and especially when facing emergencies, with international and regional human rights mechanisms, extend invitations to them and facilitate their visits so they can assist States in developing and implementing fully rights-respecting and protecting policies concerning assemblies.

## **Ensuring accountability and reparations for human rights violations in the context of assemblies**

### ***States should:***

30. Ensure prompt, impartial and thorough investigations into allegations of human rights violations in the context of assemblies, resulting in those responsible being held to account and effective remedies being provided to the victims.
31. Prioritize the accountability of those with command responsibility and in a position of authority, responsible for the violations.
32. Refrain from the use of emergency measures to provide immunity to law enforcement for human rights abuses.
33. Undertake, in consultation with civil society, legislative, security and institutional reforms, in addition to criminal prosecutions, to ensure full accountability and non-repetition of violations in the context of assemblies. This may include reassessing the nature and structure of law enforcement bodies, their instructions and equipment.
34. Establish a competent, impartial and independent commission of inquiry to address serious, widespread or systematic violations alleged in the context of assemblies, and ensure such a commission includes a wide-spectrum of civil society, is victim-orientated, and has a mandate to look at root-causes of the violations, to pro-actively gather evidence and to make recommendations for legal reforms and criminal investigation.
35. Provide adequate, effective and prompt reparations without discrimination to all victims of gross violations of international human rights law and serious violations of international humanitarian law in the context of assemblies, including of sexual and gender-based violations.

## **Ensure dialogue and public participation**

### ***States should:***

36. Ensure individuals and communities are free to express their views and to participate in the development of policies and laws that affect them, including during emergency situations. It is only through such inclusion that the emergency situations and the emergency root causes can be holistically addressed.
37. Regard civil society and social movements as partners for developing more sustainable solutions to emergencies, create forums to engage meaningfully with such movements and take meaningful measures to address their legitimate concerns and demands.

## **Obligations of international community in respect to assemblies**

38. As part of their obligation to respect, protect and fulfil human rights, and to prevent serious, widespread or systematic human rights violations in context of assemblies, States further should:
  - a) suspend weapons sales and support arms embargos relative to States involved in the serious repression of human rights in the context of assemblies;
  - b) support the investigation, prosecution and punishment of serious violations of human rights and international humanitarian law, including by supporting and cooperating with international criminal law prosecutions on the regional, international and transnational levels, in line with the principle of complementarity; and using universal jurisdiction to prosecute serious crimes such as torture and unlawful killings in the context of assemblies.

- c) grant refugee status or an equivalent international protection status to activists facing persecution in connection with their participation in assembly or for their membership of a particular social group or for expressing political opinions including through an assembly, by acting promptly and considering their family dependencies and commitments; and protect them against refoulement to locations where they could face serious threats to their life or freedom;
  - d) support, including through involvement in regional or UN mechanisms, the meaningful participation of diverse social activists in political processes, including peace and security processes.
  - e) when acting collectively in international and/or regional organizations, take positive steps to facilitate peaceful assemblies, including protests and social movements, by removing cumbersome, opaque and States-imposed procedures and restrictive legislation.
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*For any information about the Joint Declaration and media requests, please contact:*

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