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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Access to justice as an integral element of the protection of rights to freedom of peaceful assembly and association**

**Report of the Special Rapporteur on the rights to freedom of peaceful  
assembly and of association, Clément Nyaletsossi Voule\***

#### *Summary*

The Secretariat has the honor to transmit to the Human Rights Council the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, prepared pursuant to Council resolutions 15/21 and 41/12. In the present report, he addresses the importance of guaranteeing access to justice in the context of the rights to freedom of peaceful assembly and of association. Those fundamental rights contribute to the fight against impunity through accountability and prevent future violations and abuses from occurring. In the report, he also recognizes the fundamental role lawyers and legal practitioners have played and continue to play in protecting protesters around the world.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



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## I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolutions 15/21 and 41/12. It introduces the activities of the Special Rapporteur over the period 16 April 2020 to 14 April 2021, and addresses the importance of access to justice in the context of the rights to freedom of peaceful assembly and of association.

2. In recent years, the Special Rapporteur has observed and is concerned about adverse effects on the effective enjoyment of the rights to freedom of peaceful assembly and of association arising from factors directly or indirectly preventing, hindering or impeding access to justice. He recalls that all States governed by the rule of law have an obligation to eliminate obstacles that impair or restrict access to justice. He has witnessed how, in the context of the exercise of the rights to freedom of peaceful assembly and of association, specific challenges exist that affect access to justice, restrict the overall exercise of the rights to freedom of peaceful assembly and of association and contribute to impunity for the violation of those rights. He has witnessed how lawyers have had an important and specific role in facilitating access to justice and promoting fundamental freedoms, noting in particular their involvement in protecting protesters around the world and the risks those lawyers face. Hence, the Special Rapporteur decided to provide practical guidelines for lawyers to support them in their work.<sup>1</sup>

3. For the purposes of the present report, the Special Rapporteur will focus first on the complex foundation of rights related to access to justice and its relationship with the rights to freedom of peaceful assembly and of association. He will then examine the conditions required for its effective realization and specific challenges related to peaceful assemblies. Finally, he will expand on the important role of lawyers in the context of peaceful assemblies.

4. The present report was prepared on the basis of numerous consultations and discussions that the Special Rapporteur had with civil society organizations, grass-roots organizations, trade unions, legal practitioners, government representatives and other actors around the world since the beginning of his role as mandate holder. He has also taken into consideration information that he continuously receives. In addition, the Special Rapporteur convened a two-day expert meeting with human rights lawyers in Geneva; organized virtual consultations with civil society actors and trade union representatives from Central America, West Africa and Central Asia; and held a consultation with over 70 lawyers from around the world. Furthermore, with the support of partners, he conducted interviews of lawyers from around 40 countries. The report is also informed by available research materials and previous reports of other mandate holders, resolutions of United Nations bodies and the work of regional bodies. Lastly, the report benefited from responses to a questionnaire he circulated, including replies from 14 Member States and 33 individuals and groups.<sup>2</sup>

5. The language of submission of the present report is English. However, the Special Rapporteur wishes to point out that notwithstanding United Nations translation policies, the language found in all the translated versions of the report is meant to be understood as inclusive of all, regardless of sex, social gender or gender identity.

## II. Activities undertaken by the Special Rapporteur

### A. Country visits

6. The Special Rapporteur was not able to conduct any country visits during the reporting period because of the ongoing coronavirus disease (COVID-19) crisis. He sent visit requests or reminders to 24 countries. The Special Rapporteur thanks Brazil, the Niger, Poland and Saudi Arabia for responding positively. In the context of the COVID-19 pandemic, the

<sup>1</sup> The guidelines are to be made available in an addendum to the present document.

<sup>2</sup> Information is to be made available at [www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/HRC47Report.aspx](http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/HRC47Report.aspx).

Special Rapporteur hopes to be able to agree on dates with those countries and honour the invitations.

## **B. Communications**

7. The Special Rapporteur sent a total of 178 communications to States and 14 to other actors between 16 April 2020 and 14 April 2021.<sup>3</sup>

## **C. Other activities**

8. The Special Rapporteur convened four webinars to celebrate the tenth anniversary of the mandate during the forty-fourth session of the Human Rights Council. The topics of the webinars were: taking stock of the work of the mandate; COVID-19 and protest; civic space; and workers' rights.

9. He also convened a high-level webinar to mark 10 years of protecting freedom of assembly and of association, jointly with the Foreign Ministers of Czechia and Lithuania, the United Nations Deputy High Commissioner for Human Rights, the European Union Special Representative for Human Rights, the International Labour Organization and many other distinguished speakers, including civil society actors and government representatives.

10. He participated in approximately 15 webinars organized by governments and civil society actors and took part in numerous events leading to the development of Human Rights Committee general comment No. 37 (2020) on the right to freedom of peaceful assembly, and also took part in promoting it after its publication.

11. On 9 December 2020, the Special Rapporteur published a joint declaration on the right to freedom of peaceful assembly and democratic governance, together with: the Inter-American Commission for Human Rights and its Special Rapporteur on freedom of expression; the Special Rapporteur on human rights defenders and focal point for reprisals in Africa of the African Commission on Human and Peoples' Rights; and the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE).

12. On 14 April 2020, the Special Rapporteur published 10 principles by which States should abide in their response to the COVID-19 pandemic to protect the rights to freedom of peaceful assembly and of association.<sup>4</sup> He also published a set of indicators for the use of governments, civil society and the broader public to assess the freedoms to peaceful assembly and association during public health emergencies.

## **III. Access to justice**

### **A. International legal framework**

13. The legal complexity and richness of access to justice lie in the fact that it is both a combination of fundamental rights and a process of restoring the exercise of other rights that have been violated or disregarded. It encapsules rights that are enshrined in international and regional human rights treaties. The International Covenant on Civil and Political Rights foresees the right to effective judicial protection, the right to a fair trial, the right to an effective remedy and the right to equality.<sup>5</sup> Other international instruments that deserve to be mentioned are the Convention on the Elimination of All Forms of Discrimination against

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<sup>3</sup> The communications sent and replies received are to be made available in an addendum to the present document.

<sup>4</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E).

<sup>5</sup> See articles 2.3, 14 and 26 of the International Covenant on Civil and Political Rights; and Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

Women,<sup>6</sup> the Convention on the Rights of Persons with Disabilities<sup>7</sup> and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>8</sup> In the regional human rights systems, the notion of access to justice is also incorporated in other rights, such as the right to equality before the law,<sup>9</sup> including equality of arms; the right to a fair trial;<sup>10</sup> and the right to an effective remedy.<sup>11</sup>

14. There has been a trend to expand the concept of access to justice to recognize it as a fundamental right, although there is no conventional recognition as such. This concept has been developed in particular by the jurisprudence of the Inter-American Court of Human Rights, using the term “right to access to justice” in decisions and demonstrating concrete elements to define it.<sup>12</sup> The Court formally recognized access to justice as an autonomous and independent right from the right to a fair trial.

15. States have reaffirmed the right of equal access to justice for all, including groups in vulnerable situations, and have committed to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all. The right to equality in accessing justice is not limited to citizens. It must be available to all individuals, regardless of nationality or statelessness, to asylum seekers, refugees, migrant workers, unaccompanied children or any other persons in vulnerable situations. This right also ensures equality of arms, which in exceptional cases might also require that the free assistance of an interpreter be provided.

16. Access to justice is recognized as a basic principle of the rule of law and in its absence, people are unable to have their voices heard, exercise their rights, challenge discrimination or hold decision makers accountable. It guarantees that people can go before the courts to demand that their rights be protected, without discrimination. It allows individuals to protect themselves from violations of their rights, offering a remedy to the consequences of tort and holding authorities accountable. Access to justice refers to the individual empowerment and enforcement component of the rule of law, and it largely depends upon an individual’s knowledge of their rights and access to tools to enforce those rights effectively and affordably. In a way, the right to access to justice, through the principle of accountability, is aimed at balancing the relationship between individuals as right holders and duty bearers, including those duty bearers who maintain State-like powers, thereby affecting the ability of rights holders to enjoy their rights.

17. The State’s positive obligations in relation to access to justice require the establishment of a judicial system that guarantees rights, and of correlated measures and programmes to remove obstacles that impede its effective exercise.<sup>13</sup> Effective access to justice requires judicial systems where judges, lawyers and prosecutors are free to carry out their professional duties independently and without improper interference from the government, and free from political pressure and fear of harassment.

18. In the present report, the term “everyone” refers to every human being without discrimination on the basis of race, colour, sex, property, birth, age, national, ethnic or social origin, language, religion, economic condition, political or other opinion, sexual orientation

<sup>6</sup> See art. 15 of the Convention; and Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015) on women’s access to justice.

<sup>7</sup> Convention on the Rights of Persons with Disabilities, art. 13.

<sup>8</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 11 and 16–18; and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families.

<sup>9</sup> African Charter on Human and Peoples’ Rights, art. 3.

<sup>10</sup> American Convention on Human Rights, art. 8; African Charter on Human and Peoples’ Rights, art. 7; and Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 6.

<sup>11</sup> American Convention on Human Rights, art. 25; and European Convention on Human Rights, art. 13.

<sup>12</sup> See, for example, Inter-American Court of Human Rights, *Myrna Mack Chang v. Guatemala* (25 November 2003), and Inter-American Court of Human Rights, *Hacienda Brasil Verde workers v. Brazil* (20 October 2016).

<sup>13</sup> See European Court of Human Rights, *Airey v. Ireland*, Application No. 6289/73, Judgment, 9 October 1979.

or gender identity, disability or other status, and any ground that is aimed at or may result in the undermining of the enjoyment of human rights on an equal basis. Certain attention should be paid to the specific obstacles for accessing justice emanating from the specific situations that specific groups might find themselves in, either temporarily or permanently.

19. Factors that may put some persons trying to access justice in a vulnerable situation can be personal, including age, gender, sexual orientation, religion, nationality, ethnicity, and physical and mental health. In addition, socio-cultural factors can be an issue, such as attitudes towards minorities or the stereotypes that the media has towards certain categories of people, including journalists, protesters, environmental defenders, women, and lesbian, gay, bisexual, transgender and intersex persons. Some groups, including children and groups protected under specific international or regional standards, should always be considered as being in a situation of vulnerability when accessing justice.<sup>14</sup>

## **B. Access to justice in the context of freedom of peaceful assembly and of association and strengthening of civic space**

20. Access to justice, the rights to freedom of peaceful assembly and association, and the strengthening of civic space are inextricably linked. They all represent a combination of human rights and enabling rights. They enable individuals to express themselves collectively and participate in shaping their societies<sup>15</sup> and are also instrumental in advancing human rights, the rule of law, democracy, peace and sustainable development.<sup>16</sup>

21. An enabling environment of civil society requires not only protection, but also proactive efforts to bring perpetrators of human rights violations to justice,<sup>17</sup> including violations to the rights to freedom of peaceful assembly and of association. Hindered access to justice in the context of these freedoms has an overall chilling effect on their exercise and contributes to the closing of civic space. In return, the closing of civic space contributes to the lack of trust in institutions, including the justice system. When access to justice is not guaranteed or is obstructed, individuals will not only refrain from seeking remedy through formal or informal institutions of justice, but will often also refrain from exercising their rights to freedom of peaceful assembly and of association in the first place.

22. For instance, as a result of his interviews with lawyers in Hong Kong, China, the Special Rapporteur noticed that a generalized climate of fear among civil society due to repression and the absence of effective remedy prevents people from taking part in demonstrations, which frustrates people's rights to peaceful assembly. Similarly, in the Bolivarian Republic of Venezuela, the lack of independence and the impartiality of the justice system has made it impossible for violations of the rights to freedom of peaceful assembly and of association to be known, rectified and remedied in national courts. This has a tragic effect on people's will to exercise their rights.<sup>18</sup> The Special Rapporteur is of the opinion that barriers to access to justice should never be placed as deterrence measures undermining the essence of other rights.

23. In successive reports and public statements, the Special Rapporteur has noted the worrying trend of closing of civic space, which prevailed during 2020, where 43.4 per cent of the global population lived in countries rated as having a repressed civic space.<sup>19</sup> Following the World Health Organization declaration of a pandemic in January 2020, Governments around the world took extraordinary measures to restrict fundamental freedoms in order to respond to an unprecedented health emergency. Individuals and groups continued to mobilize, using alternative forms of protests such as "pot-banging" protests in Brazil, balcony

<sup>14</sup> See A/HRC/42/37, A/HRC/27/65, A/HRC/46/32/Add.1, A/HRC/43/42, A/74/159, A/HRC/23/35 and A/HRC/37/25.

<sup>15</sup> Human Rights Committee, general comment No. 37 (2020) on the right of peaceful assembly, para. 1. A/73/279, paras. 7–8.

<sup>17</sup> A/74/349.

<sup>18</sup> A/HRC/45/33.

<sup>19</sup> CIVICUS Monitor, 2020. Available at <https://findings2020.monitor.civicus.org/>.

protests in Spain, car protests in the Republic of Korea, and a global lesbian, gay, bisexual, transgender and intersex pride gathering online.

24. The Special Rapporteur has received information that in many contexts, restrictions allegedly went beyond the legitimate protection of public health, often circumventing access to justice. For example, courts closed or reduced their operations, which negatively affected the provision of timely and fair hearings, sometimes leading to prolonged pretrial detention.<sup>20</sup> In some contexts, the sanitary measures put in place also impeded access to legal assistance, while in others, the measures were de facto breaching the confidentiality of communications between lawyers and clients.<sup>21</sup> In his key principles on State responses to COVID-19, the Special Rapporteur stressed that it was vital that new measures adopted respect human rights; that any limitations on rights be in accordance with the principles of legality, necessity and proportionality; and that independent oversight and review of measures taken during the crisis be guaranteed.<sup>22</sup>

25. The Netherlands is a good example of a State where people can appeal to courts to obtain an independent judgment regarding any decision restricting assemblies in the context of the health crisis.<sup>23</sup> States should always incorporate sunset clauses into any state of emergency laws passed in relationship to the current crisis, guaranteeing their automatic expiry if the public health emergency does not require them to be prolonged when the emergency has ended.

### **C. Access to justice and the fight against impunity in the context of the rights to freedom of peaceful assembly and of association**

26. One of the main obstacles to upholding access to justice and the rule of law is impunity. It refers to the failure to bring perpetrators of human rights violations to justice. Impunity not only causes immense suffering to victims, their families and the community. It also discourages others from exercising their rights, as it facilitates the recurrence of human rights violations and abuses.

27. Access to justice in the context of the rights to freedom of peaceful assembly and of association plays a crucial role in securing the enjoyment of those rights by preventing violations from occurring and facilitating the search for justice and reparation after violations occur. The Special Rapporteur stresses that it is impossible to guarantee full exercise of the rights to freedom of peaceful assembly and of association without ensuring and providing accountability when violations of those rights occur. States have the responsibility to combat impunity for the countless threats and attacks, including killings, made against members of associations around the world and against protesters. Moreover, they have a responsibility to do so for everyone who is prevented from enjoying their freedoms of peaceful assembly and association.

28. That responsibility translates into the obligation to investigate allegations of human rights violations promptly, thoroughly and effectively.<sup>24</sup> Any failure to do so would lead to impunity. The Special Rapporteur refers to the essential guidelines for ensuring due diligence in the investigation of such violations developed by the former Special Rapporteur on the situation of human rights defenders.<sup>25</sup>

<sup>20</sup> See communication EGY 10/2020, dated 29 July 2020. Available at <https://spcommreports.ohchr.org>.

<sup>21</sup> See communication CHN 8/2020, dated 7 May 2020. Available at <https://spcommreports.ohchr.org>. See also A/HRC/45/16, annex II (“Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies”).

<sup>22</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E).

<sup>23</sup> See submissions from States.

<sup>24</sup> Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, paras. 15 and 18.

<sup>25</sup> A/74/159.

## IV. Effective realization of access to justice in the context of the rights to freedom of peaceful assembly and of association

### A. Legislative protection

29. The foundation on which individuals can rely to seek remedies for violations and abuses of their rights is the legal standing in place. The absence of clear rules and standards can lead to legal uncertainty, followed by arbitrary or discriminatory practices, which in turn can lead to obstructed access to justice. Peaceful assembly and association are recognized as human rights.<sup>26</sup> Given their status as rights, they should be enjoyed, as far as possible, without regulation or interference.<sup>27</sup> The majority of States recognize those rights in their national constitutions, and the corresponding obligations are often translated into legislation. Laws that affect the exercise of those rights should be drafted with the purpose of facilitating their realization and should clearly set out the duties and responsibilities of all public officials involved. That means allowing assemblies to take place without unwarranted interference. It also means protecting participants,<sup>28</sup> or facilitating the establishment of associations and enabling them to pursue their objectives. Although legitimate grounds for restrictions exist, only those restrictions that are provided by law and that are necessary and proportionate in a democratic society are allowed, and their scope is to be narrowly interpreted.

30. The Special Rapporteur notes that many States still have legislation that is too intrusive, that imposes undue restrictions and that, in some instances, through lack of precision and vague wording, enables violations and abuses. For instance, both the lack of clarity regarding the meaning of “national security” in the legislation of numerous States and the impact of broad counter-terrorism legislation have been used by authorities to impose disproportionate restrictions on peaceful assemblies and on the establishment of associations. National legislation criminalizing acts of terrorism must be accessible, formulated with precision, non-discriminatory and non-retroactive.<sup>29</sup> Ensuring that counter-terrorism legislation and policy comply with international legal standards helps to promote the prosecution and conviction of individuals engaged in acts of terrorism. On the other hand, excessively broad language that restricts the enjoyment of rights and freedoms breaches the principles of necessity and proportionality that govern the permissibility of any restriction on human rights.<sup>30</sup>

31. A major concern in this context is the existence and use of vague status-based offences of “membership of” or “association with” a terrorist group<sup>31</sup> in legislation that fails to define “membership” or does not require a link between the membership and the prohibited status or activity. Such legislation would be contrary to the principle of legality, in particular, where such membership can lead to criminal penalties.<sup>32</sup> The Special Rapporteur believes that definitions of terrorism or terrorism-related offences should be narrowly construed and only refer to conduct that truly comprises terrorism, according to standards set by international law, including international human rights law and international humanitarian law. As a good practice, judicial authorities should issue guidance to law enforcement officials to ensure that those offences are never interpreted to undermine the legitimate work of associations. For example, the Council on Legislation in Sweden advised against the proposal to criminalize participation in a terrorist organization, arguing that such a broad criminalization would constitute an undue restriction on the right to freedom of association.<sup>33</sup>

32. The Special Rapporteur is particularly worried about legislation in which “national security” concerns allow for exceptions to due process guarantees, including in China, Egypt,

<sup>26</sup> International Covenant on Civil and Political Rights, arts. 21–22.

<sup>27</sup> OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, 2nd ed. (Warsaw, OSCE, 2010), para. 17.

<sup>28</sup> Human Rights Committee, general comment No. 37 (2020), para. 8.

<sup>29</sup> See General Assembly resolution 72/180.

<sup>30</sup> A/HRC/16/51, para. 26; and A/HRC/41/41, para. 34.

<sup>31</sup> A/HRC/45/27, para. 29.

<sup>32</sup> A/HRC/28/28, para. 26.

<sup>33</sup> See submissions from States.



India or Iran (Islamic Republic of),<sup>34</sup> which restrict the exercise of fundamental freedoms and hinder access to justice. Ensuring that counter-terrorism legislation and policy comply with international legal standards helps to promote the prosecution and conviction of individuals engaged in acts of terrorism. Excessively broad language poses the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights.

33. An adequate normative recognition of those rights must also indicate that those whose rights are violated are entitled to the full range of remedies. National law must provide remedies when abuses to the rights to freedom of peaceful assembly and of association occur. In order to allow rights to be enforced, it is necessary to define what mechanisms are available for individuals, identify the authorities responsible for issuing administrative decisions regarding the exercise of such rights, and establish the rules applicable to those officials and the type of remedies available for alleged violations or abuse.

## **B. Legal knowledge**

34. Individuals and groups need to know their rights in order to understand, even in general terms, that they have been wronged in some way or that they are not receiving the protection to which they are entitled. Similarly, authorities, including law enforcement agents and everyone involved in the discharge of justice, should be knowledgeable about human rights issues. The first factor affecting whether individuals are aware of their rights and duties and those of others is education.<sup>35</sup> The Special Rapporteur notes that national law commissions can play a key role in disseminating information on legal issues to the community, in cooperation with relevant enforcement agencies.<sup>36</sup> Initiatives aimed at supporting legal education, access to legal information, and human rights awareness in general are a step in the direction of empowerment of communities.

35. States are duty-bound to ensure that education is aimed at strengthening respect for human rights and fundamental freedoms,<sup>37</sup> but they should also ensure that individuals and groups can access information on demand. Everyone, without exception, has the right to have access to any relevant information from a variety of sources, in addition to the right of individuals to request and receive information that may affect the exercise of their individual rights.<sup>38</sup> However, public authorities must provide accessible information for all regarding the legal framework governing the rights to freedom of peaceful assembly and of association and ensure public awareness about the law and relevant regulations. That information should include any procedures to be followed by those wishing to exercise the right, who the responsible authorities are, the rules applicable to those officials and the remedies available for alleged violations of rights.<sup>39</sup> Some countries have adopted measures that serve to improve familiarity with, and accessibility and understanding of, the law, especially for groups in vulnerable situations. The Special Rapporteur welcomes initiatives such as the one from the Ministry of Justice of Slovakia, which operates a grant scheme for civil society associations that promotes the human rights of persons with disabilities, children, lesbian, gay, bisexual, transgender and intersex persons, or people who have experienced gender-based violence, providing legal help and awareness-raising campaigns.<sup>40</sup>

36. The Special Rapporteur recalls the obligation of public authorities to publicly recognize civil society and the rights to freedom of peaceful assembly and of association. He also stresses the importance of promoting at different levels, both within State institutions

<sup>34</sup> See submissions from civil society.

<sup>35</sup> Factors leading to marginalization and social exclusion, in particular extreme poverty, adversely affect people trying to access justice. Illiteracy or lack of education and information is one of the most serious obstacles barring access to justice (A/HRC/8/4, para. 26).

<sup>36</sup> A/HRC/42/39/Add.1, para. 61.

<sup>37</sup> See United Nations Declaration on Human Rights Education and Training.

<sup>38</sup> A/68/362, para. 19.

<sup>39</sup> Human Rights Committee, general comment No. 37 (2020), para. 28.

<sup>40</sup> See submissions from States.

and also in mainstream media, positive narratives to combat the stigmatization and negative image surrounding protests, social movements and civil society around the world. Those narratives should be respectful of the human rights of those exercising their rights to freedom of peaceful assembly and of association, for example, regarding their presumption of innocence. He welcomes initiatives such as the one from Armenia to organize training for police officers on the rights of participants of assemblies, or public campaigns in favour of protests, such as *Se vale protestar* (“it is worth protesting”) in Colombia. He additionally welcomes the work of civil society, including in Kenya, where several organizations produced pocket-sized copies of the new Constitution to distribute to the population when it came into force.

### C. Legal assistance, advice and representation

37. Legal assistance, advice and representation are essential components of a fair and efficient justice system that is based on the rule of law.<sup>41</sup> Legal aid refers to the service provided at no cost for those without sufficient means or when the interests of justice so require. Legal assistance must meet certain requirements: among other things, it must be prompt and confidential. It should also be free of charge when the person does not have sufficient means to pay for it.<sup>42</sup>

38. The capability of the State to give effect to the right of legal advice and assistance through legal aid is limited or non-existent in many countries that still lack the resources and capacity necessary to promote the right of everyone to free legal aid, and where the inadequacy of funds to ensure legal support for those who do not have sufficient financial means adversely affects their access to justice and, consequently, their equal and effective enjoyment of human rights and fundamental freedoms,<sup>43</sup> including the rights to freedom of peaceful assembly and of association. The Special Rapporteur notes that the ever-increasing number of arrests of protesters and human rights defenders around the world, and the subsequent trials for some of them, is stretching the capacities of judiciary systems, some of which were already struggling. The Special Rapporteur recalls that law enforcement should avoid the use of containment and mass arrests of participants at an assembly. Additionally, he stresses that the increased use of alternative mechanisms for resolving disputes involving minor offences, including at the community level, might contribute to the availability of lawyers to deal with serious cases involving the rights to freedom of peaceful assembly and of association.<sup>44</sup>

39. It is the Government’s obligation to adopt all appropriate legislative, judicial, administrative, budgetary and educative measures towards the realization without discrimination of the right to legal assistance and advice for any individual subject to its jurisdiction, and to ensure its availability through legal aid for those who need it. There is a wide range of legal aid service providers, and States should adopt a model that can maximize access to free legal aid for everyone. Adequate time and facilities should be provided, and States should also ensure that the client-lawyer privilege is preserved. For example, legal aid can be provided, administered, coordinated and monitored by a State institution, such as the public defender’s office. It can also be provided jointly by independent and autonomous agencies and be based on public-private partnerships, academia, private lawyers or bar associations. Legal aid might be provided by public defenders, private lawyers, contract lawyers, pro bono schemes, bar associations, legal clinics, paralegals or others. It can also include non-governmental organizations, community-based organizations, religious and non-

<sup>41</sup> See, e.g., the International Covenant on Civil and Political Rights, art. 14 (3) (d); the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 18 (3) (d); the European Convention on Human Rights, art. 6 (3) (c); the American Convention on Human Rights, art. 8 (2) (e); and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

<sup>42</sup> See, e.g., *Aliboeva v. Tajikistan* (CCPR/C/85/D/985/2001), para. 6.4; and *Hussain v. Mauritius* (CCPR/C/77/D/980/2001), para. 6.3.

<sup>43</sup> A/HRC/23/43, para. 46.

<sup>44</sup> See, for example, A/HRC/42/39/Add.1, para. 57.

religious charitable organizations, associations or academia.<sup>45</sup> Typically, legal advice, assistance and representation are provided by a lawyer or paralegal, although depending on the country and the circumstances, they may be provided by another suitably trained person or facilitated by civil society organizations.

40. Regardless of their structure, legal aid schemes should be free from political or judicial interference and should be independent from the authorities. The State should not interfere with the organization of the defence of the beneficiary or with the independence of the legal aid provider. The Special Rapporteur noted from his interviews with lawyers that in some contexts, including in China, Egypt, Iran (Islamic Republic of) and Nicaragua, persons deprived of their liberty following their participation in protests did not trust the legal aid scheme provided by the authorities because they did not feel that the legal aid body was free from undue political or judicial interference. The Special Rapporteur recalls that everyone has the right to legal assistance by counsel of their choice at any time during custody or detention, including immediately after their apprehension, and such access is to be provided without delay.<sup>46</sup> He holds as good practice legislation allowing persons deprived of their liberty to have access to legal assistance or legal aid from their first police hearing through systems of “on-call” legal practitioners, one such example being the system in Switzerland.<sup>47</sup> He notes that during the first hours of custody, individuals are at a greater risk of torture or other forms of ill-treatment, ranging from neglect and demands for bribes to coerced confessions and unlawful detention. Consequently, during the first hours following apprehension, individuals should always have the ability to access legal assistance, legal aid or a lawyer of their own choosing, and their meetings should be held in full respect of confidentiality.

41. Responsible authorities should be vigilant and diligent, and the needs of groups in situations of vulnerability should be taken into consideration by States. Certain groups, such as refugees and asylum seekers, indigenous peoples and children, are more likely to need free legal aid. It is important that measures are taken to ensure that those groups have access to such aid or that specific legislation is adopted to guarantee them access to legal assistance – for example, regarding the free assistance of an interpreter during legal proceedings for children.<sup>48</sup>

42. Legal assistance is essential in accessing justice in the context of the rights to freedom of peaceful assembly and of association. However, the enjoyment of those rights should not require individuals and groups to seek the services of an accredited legal practitioner. Such a requirement could impair the essence of the right, discourage participation in assemblies or associations and have a chilling effect. In some countries, notification and authorization procedures for assemblies or procedures for registration of associations require the help of a person suitably trained in law because they are too complex to navigate. Such a situation would not be consistent with the best practice recommended by the mandate of the Special Rapporteur and international standards.

#### **D. Fair trial and effective remedy**

43. The right to a fair trial<sup>49</sup> implies access to a pre-established, independent and impartial court, the decisions of which are based on law, following proceedings that observe procedural guarantees. This right is of a particularly complex nature, combining various guarantees with different scopes of application. Those guarantees are: equality before the courts; the right to a fair and public hearing by a competent, independent and impartial tribunal established by law; procedural guarantees; the right to compensation in cases of a miscarriage of justice in

<sup>45</sup> A/HRC/23/43, paras. 43 and 49–50; see also the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

<sup>46</sup> A/HRC/30/37, annex, principle 9 and guideline 8.

<sup>47</sup> See submissions from States.

<sup>48</sup> A/HRC/30/37, annex, guideline 18.

<sup>49</sup> Universal Declaration of Human Rights, art. 10; International Covenant on Civil and Political Rights, art. 14 ; American Convention on Human Rights, art. 8; European Convention on Human Rights, art. 6.

criminal cases; and the right not to be tried or punished again for an offence that has already been tried (*ne bis in idem*).<sup>50</sup> The first three are particularly important in relation to access to justice in the context of the rights to freedom of peaceful assembly and of association.

44. The Human Rights Committee has extended the non-derogability to certain guarantees of due process. The requirement of competence, independence and impartiality of a tribunal is a requirement that cannot be subject to any exception.<sup>51</sup> This applies to all legal professions engaged in the justice system, including lawyers and prosecutors, and courts and tribunals, whether ordinary or specialized, civilian or military. The Committee also noted the existence in some countries of military or special courts that were trying civilians, which may raise serious problems regarding the equitable, impartial and independent administration of justice.<sup>52</sup> The Special Rapporteur notes that after several waves of protests in Lebanon,<sup>53</sup> hundreds of civilians involved in the demonstrations were referred to the military justice system. Under Lebanese law, those military courts have exceptional jurisdiction on civilians prosecuted for violence against security personnel. The Special Rapporteur considers that military tribunals should only be competent to try military personnel for military offences and must not try civilians involved in protests in any circumstance. He recalls the views of the Working Group on Arbitrary Detention, which has consistently held in its jurisprudence that a tribunal composed of military personnel cannot be considered a competent, independent and impartial tribunal.<sup>54</sup>

45. Another important aspect of access to justice is accountability and the right to an effective remedy. Where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice perpetrators of human rights violations, while considering the situation of vulnerability of certain groups.<sup>55</sup>

46. Ensuring accountability and access to an effective remedy involves protecting the imprescriptible right of victims, their families and society to know the truth about what happened. The Special Rapporteur stresses that in mass protests where hundreds or thousands of injuries result from the use of force, it is of the utmost importance to guarantee the right to uncover the truth. All complaints of human rights violations in the context of peaceful assemblies must be promptly, independently and thoroughly investigated. Additionally, a crucial element is to ensure accountability, bring perpetrators to justice, combat impunity and avoid repetition. It is also key that authorities publicly recognize when violations occur.

47. Effective remedies can take many forms; they can be monetary or non-monetary, substantial or procedural. One example would be allowing an association to access the legal personality after a refusal. In the context of peaceful protest, it could be compensation after an injury, including physical and mental harm, caused by the excessive use of force by public authorities.

<sup>50</sup> Human Rights Committee, general comment No. 32 (2007), paras. 54–57.

<sup>51</sup> *Ibid.*, para. 19.

<sup>52</sup> *Ibid.*, para. 22; and Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 45.

<sup>53</sup> See communications LBN 3/2020, dated 26 August 2020, and LBN 6/2019, dated 20 November 2019. Available at <https://spcommreports.ohchr.org>.

<sup>54</sup> See, e.g., opinions No. 4/2019, para. 58; No. 73/2018, para. 61; No. 3/2018, para. 57; No. 56/2017, para. 58; No. 51/2017, para. 43; No. 51/2016, para. 26; No. 44/2016, para. 32; No. 15/2016, para. 25; and No. 6/2012, para. 45. See also African Commission on Human and Peoples' Rights, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, principle 4B, p. 24.

<sup>55</sup> Human Rights Committee, general comment No. 31 (2004), paras. 15–16.

## V. Threats to accessing justice in the context of the right to freedom of peaceful assembly

### A. Prior to assemblies

48. The Special Rapporteur expressed concern on numerous occasions regarding legislation that imposes harsh restrictions on peaceful assemblies, imposing mandatory notifications and even authorizations. For instance, in some contexts, assemblies are deemed illegal when protesters fail to notify, and the assemblies are automatically dispersed, often with excessive use of force. The Special Rapporteur reiterates that the exercise of the right to freedom of peaceful assembly should not be subject to previous authorization by the authorities. At most, it should be subject to a prior notification procedure. However, prior notification procedures often function as de facto requests for authorization and are unduly bureaucratic. Among others, States requiring such procedures include Cameroon, the Democratic Republic of Congo, Ethiopia, Kenya, Togo and Turkey.

49. The law should provide recourse to a prompt and effective remedy against decisions restricting or prohibiting assemblies. The timelines and duration of such proceedings against restrictions on an assembly must not jeopardize the exercise of the right.<sup>56</sup> The Special Rapporteur notes from his interviews with lawyers that in many countries, including Azerbaijan, Kazakhstan and Poland, appeals against administrative refusals to hold assemblies are often ineffective because of the time it takes to issue the decision. The Special Rapporteur stresses that the availability of an initial option of effective administrative review might reduce the burden on the judicial system. It may also contribute to a better relationship between the authorities, the organizers and the public in general, who might feel intimidated by a judicial review. Seeking judicial review is more confrontational and it also entails more resources. When the administrative review fails to satisfy the applicant, there should be a mechanism for appeal to an independent court.<sup>57</sup> Both in administrative and court proceedings, the burden of proof should be on the relevant authority to prove that a restriction was justified, legal and proportionate.

50. The Special Rapporteur notes that in some countries identity controls and confiscation of objects are practised in a discriminatory manner before protests, and there is often no effective remedy against them. The use of such identity controls amounts to a type of profiling and surveillance that has a potentially chilling effect on the right to freedom of peaceful assembly.<sup>58</sup> Any alleged cases of abuse of power or of misconduct by law enforcement that is motivated by racial or other discrimination during preventive identity controls in the context of protests should be investigated effectively. He also observed in his interviews with lawyers that preventive arrests have been reported as a systematic practice to impede alleged organizers or leaders from participating in demonstrations, including in Azerbaijan, Egypt, France, Kazakhstan, Lebanon, Poland, Turkey and the United States of America. The Special Rapporteur recalls that the use of preventive detention of targeted individuals to keep them from participating in assemblies may constitute arbitrary deprivation of liberty, which is incompatible with the right to peaceful assembly. Practices of indiscriminate mass arrest prior to an assembly are arbitrary and thus unlawful.<sup>59</sup>

51. From his interviews with lawyers, the Special Rapporteur noted that in Lebanon, for example, checkpoints have been placed at the entrance of assembly sites where police officers will engage in random identity controls and arrests of protesters and bystanders. In France, preventive arrests and police custody (*garde à vue*) of protesters and organizers are widely used and often justified with an alleged “intent to commit a crime”. This is compounded by the lack of remedy for arbitrary detention in French legislation, other than the judicial declaration that the detention was baseless, the prosecutor being the only competent authority with oversight powers to monitor the respect of rights and conditions of detention. The

<sup>56</sup> Human Rights Committee, general comment No. 37 (2020), para. 69.

<sup>57</sup> OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, 2nd ed. (2010), para. 4.6.

<sup>58</sup> A/HRC/32/36/Add.1, para. 75.

<sup>59</sup> Human Rights Committee, general comment No. 37 (2020), para. 82.

Special Rapporteur stresses that neither preventive detention nor preventive identity controls, including stop and search, should be used to create a chilling effect on the right to freedom of peaceful assembly or to criminalize protesters.

## B. During assemblies

52. The Special Rapporteur received numerous reports indicating that in many contexts, instead of dialogue and facilitation, protests are met with excessive use of force and criminalization by security forces. The Special Rapporteur recalls that in line with State obligations of accountability for human rights violations and abuses,<sup>60</sup> States should provide for criminal and disciplinary sanctions against those who interfere with or violently disperse public assemblies through excessive use of force. The law should not confer immunity against prosecution to law enforcement officials or authorities policing assemblies for crimes committed while on duty. In the event that force is used at an assembly, it should trigger an automatic and prompt review process. Where injuries or deaths result from the use of force by law enforcement personnel, an independent, open, prompt and effective investigation must be undertaken. Law enforcement personnel should also be held liable for failing to intervene where such an intervention may have prevented other officers or third parties from using excessive force. This applies equally to acts of violence, threats of violence, or incitement to hatred against participants in an assembly by other participants, counterdemonstrators, law enforcement officials or third parties. Those responsible should be sanctioned in an appropriate manner, and victims should be informed about possible remedies.<sup>61</sup>

53. The Special Rapporteur holds as good practices the existence of external review mechanisms that investigate complaints of unethical behaviour of police officers, e.g., in Malta, and the promotion of post-event debriefings of law enforcement officials, e.g., in Switzerland, which should, to the extent possible, include organizers.<sup>62</sup>

54. Policing functions should not be delegated to third parties. Assemblies should always be policed by regular law enforcement personnel. They should not be policed by members of the armed forces, including military police, as is the case in Mexico,<sup>63</sup> for example. Neither should the policing of assemblies be entrusted to private security companies that are not trained for such tasks. Policing assemblies by regular law enforcement helps to avoid a possible escalation of violence and consequent barriers to access to justice. In this respect, it is important that State agencies retain control over the use of legitimate force in a given country, as the States' responsibility for the protection of human rights, and of public order, is a non-delegable duty.<sup>64</sup>

55. The Special Rapporteur notes that in several countries the practice of "fish trapping" or "kettling", in which some of the participants are forced into a contained space without or with very limited exits, is frequently used by law enforcement officials, leading to mass arrests and excessive use of force during protests. In many cases, protesters are released after 24 or 48 hours without further actions. Protesters often present with injuries without being able to identify the perpetrator because of the nature of the "kettle". The Special Rapporteur recalls that necessary law enforcement measures targeted against specific individuals are preferred and, as far as possible, only towards people linked directly to violence, as such arrests might also be considered violations to freedom from arbitrary detention and freedom of movement.<sup>65</sup> The Special Rapporteur considers that "kettling" should never be a pre-planned response used to avoid accountability from violations to the right to freedom of peaceful assembly. Such practices may also be particularly dangerous to persons in

<sup>60</sup> A/HRC/20/27, para. 77.

<sup>61</sup> OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, 3rd ed. (2019), para. 235.

<sup>62</sup> See submissions from States.

<sup>63</sup> See communication MEX 9/2020, dated 9 October 2020 (in Spanish). Available at <https://spcommreports.ohchr.org/>.

<sup>64</sup> OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, 3rd ed. (2019), para. 165.

<sup>65</sup> Human Rights Committee, general comment No. 37 (2020), para. 84.

vulnerable situations, for example, children or persons with disabilities that affect their mobility.<sup>66</sup>

56. While the Special Rapporteur acknowledges how beneficial and transformative new technologies have been in allowing the amplification of voices and assemblies in unprecedented ways, he underlines that they have also been used to restrict and infringe protester's rights.<sup>67</sup> He notes that the use of recording devices by law enforcement agents has increased in many countries. That increase may have a positive impact on access to justice by protesters and may be useful in increasing transparency and accountability for violations and abuses that may occur during protests.<sup>68</sup> For example, the vehicles of security forces, which constitute the confined spaces where persons deprived of their liberty are often most vulnerable, could be outfitted with cameras. The use of body cameras, worn by law enforcement personnel in the context of assemblies, can also assist the work of internal investigations or civilian mechanisms, promoting accountability, where adequate safeguards are in place.<sup>69</sup> However, the usage of individual cameras or drone cameras by law enforcement requires a strict legal framework that clearly defines who is authorized to view the images obtained by those cameras, the duration of the storage and the use of such data.<sup>70</sup> Traditional assemblies should allow participants a certain level of anonymity,<sup>71</sup> but the use of surveillance tools to track and persecute protesters does not always offer the same protection.

57. The Special Rapporteur has also received information regarding the abuse of technologies, such as facial recognition tools, and the surveillance of social media sites used by activists, of phone recordings and of location tracking from around the world. States should refrain from conducting targeted surveillance using digital tools against protesters.<sup>72</sup> He believes that certain practices, whereby the protection from violation of the right to privacy can be raised in criminal proceedings by claiming unlawfulness of such evidence, are promising. One such example is when the technical means used to get the information were not proportional, e.g., in Slovakia.<sup>73</sup> Yet, he supports the call to impose an immediate moratorium on privately developed surveillance technologies to be lifted until a human rights-compliant regime has been established.<sup>74</sup>

58. The Special Rapporteur notes that law enforcement personnel present during assemblies are often not identifiable, because they do not visibly wear or display any identification, because they hide their identification or because they do not identify themselves when asked by organizers or protesters. Such practices can lead to serious barriers in accessing justice, such as the failure to investigate issues relating to excessive use of force or unlawful arrests. For example, plain-clothed officers must identify themselves before conducting a search, making an arrest or using force.<sup>75</sup> Those practices can also lead to a lack of accountability because of the impossibility of identifying the perpetrators. Law enforcement officials must be clearly and individually identifiable, for example, by displaying a name or number on their uniform. In addition, there should be a clear system of record-keeping or register of the equipment provided to individual officers in an operation, including vehicles, firearms and ammunition.<sup>76</sup>

<sup>66</sup> A/HRC/26/29, para. 40.

<sup>67</sup> A/HRC/44/24.

<sup>68</sup> *Ibid.*, para. 8.

<sup>69</sup> *Ibid.*, para. 12; and A/HRC/31/66, para. 92.

<sup>70</sup> See communication FRA 4/2020, dated 12 November 2020 (in French). Available at <https://spcommreports.ohchr.org/>.

<sup>71</sup> Regarding the use of masks, see A/HRC/26/29, paras. 32–33; and Human Rights Committee, general comment No. 37 (2020), para. 60.

<sup>72</sup> A/HRC/41/41, para. 77.

<sup>73</sup> See submissions from States.

<sup>74</sup> A/HRC/41/35, paras. 12 and 66.

<sup>75</sup> Human Rights Committee, general comment No. 37 (2020), para. 92.

<sup>76</sup> A/HRC/31/66, para. 65.

### C. After assemblies

59. Participants are often subject to arrest and penalties, the impact of which is particularly felt by groups in vulnerable situations who experience additional barriers in accessing justice. In many countries, this is followed by systematically hindered access to lawyers immediately after the arrest. For example, from interviews with lawyers, it came to the attention of the Special Rapporteur that in Poland, during the August 2020 marches, access to legal assistance was granted to detained protesters only after they signed an arrest protocol including a pre-typed statement stipulating that they did not object to the arrest and would not appeal. In some instances, detained protesters will not have access to legal assistance for long-term periods of time or will be compelled to opt for legal aid, discouraging contact with trusted legal practitioners. The Special Rapporteur received several reports of immediate trials after detention, which allow very little time to access clients and duly prepare their defence. He also received reports from lawyers who experienced difficulties in getting access to protesters deprived of their liberty while those individuals were undergoing medical examinations after having sustained injuries as a result of the use of force during the protest or the arrest, e.g., in Azerbaijan, Chile, Colombia and Turkey.

60. Similarly, the lawyers who were interviewed noticed that they had been denied access to full files and documentation, such as footage obtained by the authorities during protests. As mentioned above, surveillance tools have been used to monitor lawful protests, but they have also been used in some contexts while in police custody, in particular to intercept communications between persons deprived of their liberty and their lawyers, e.g., in China; France; Hong Kong, China; Hungary; Kenya; Spain; and Poland.

61. The Special Rapporteur holds as a good practice the possibility for national preventive mechanisms on torture to observe protests and report on the excessive use of force in collaboration with lawyers, as established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or other regional authorities for the prevention of torture. This is the case for the Catalan Ombudsman in Spain or the Austrian Ombudsman Board. Through their monitoring work, they can play a critical role ensuring that safeguards that protect people deprived of liberty are respected, including the rights to legal assistance, to have a family member notified, to an independent medical examination or to judicial review.

## VI. Role and protection of lawyers and legal practitioners

62. The Special Rapporteur has witnessed countless examples of how lawyers and legal practitioners have had a remarkable role in helping promote and protect the rights to freedom of peaceful assembly and association around the world. Civil society has been vocal and well-mobilized in denouncing restrictions and violations to these rights, but lawyers and legal practitioners are oftentimes essential to provide further protection, such as legal assistance and legal monitoring. Historically, in addition to lawyers, other members of the legal profession, such as paralegals, jurists or law students, have also played a significant role supporting and working alongside social movements. Their engagement is crucial, both to support the rights to freedom of peaceful assembly and of association and to advance the underlying human rights causes that social movements seek to promote.

63. Lawyers and legal practitioners play a crucial role in providing legal assistance and advocating for structural changes in legislation through strategic litigation and advocacy. The interviews conducted with lawyers show that in many countries, including Colombia, Mexico, South Africa and Turkey, lawyers have been actively engaged in challenging restrictions to the rights to freedom of peaceful assembly and of association through administrative, judicial or constitutional remedies. For example, in Turkey, lawyers from the Independent Mine Workers Union challenged a blanket ban on cross-province road demonstrations. The Constitutional Court ruled that freedom of assembly, owing to its nature, involves a level of disruption to ordinary life and that such disruption must be met with tolerance. Additionally, lawyers and other legal practitioners often support authorities in drafting laws and regulations, and law enforcement guidelines. They often engage with regional mechanisms and mechanisms of the United Nations, provide human rights



workshops to authorities and the general public, assist in the monitoring of places of detention and significantly contribute to awareness-raising.

64. The Special Rapporteur notes that the role of bar associations is crucial: in many countries, they have been able to coordinate and enhance mobilization during social movements to provide comprehensive protection. The Special Rapporteur aligns himself with the views<sup>77</sup> of the Working Group on Arbitrary Detention and recalls the importance of preserving the independence and impartiality of the legal profession, underlining that bar associations or any other body that represents the profession in a country should never be part of the executive power. There should be no government interference with the process of registering lawyers, or in initiating disciplinary proceedings that bar associations and law societies undertake as part of their own regulation or that come before independent courts. Where bar associations lack independence, there have been instances of harassment and threats against their members, and even the disbaring of lawyers who engaged with social movements.

65. The Special Rapporteur welcomes legislation that recognizes and protects the work of monitors during protests. However, many countries do not provide a legal status for monitors. Nor do they provide specific protections. Monitors, including journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies are entitled to protection. They are not to be prohibited from, or unduly limited in, exercising those functions, including monitoring the actions of law enforcement agents. They should also be protected from reprisals and other harassment.<sup>78</sup> The Special Rapporteur believes that in some instances, when they are independently observing, recording, documenting, reporting or intervening during peaceful assemblies, lawyers and legal practitioners can act as monitors and should be protected.

66. The interviews with lawyers revealed that they have intervened during assemblies when protesters were arbitrarily detained or their identity was being controlled. They have also documented excessive use of force, including in France, Mexico, Spain, Tunisia and the United States. In other situations, lawyers have organized themselves to provide legal assistance to protesters after demonstrations thanks to the monitoring work done during the assemblies. For example, in Lebanon, they created a hotline that was operational during protests. Lawyers and protesters would then write the number on their arms during the assemblies. A similar hotline was created in Hong Kong, China, where about 200 volunteer lawyers united to provide pro bono legal assistance to those protesters who were arrested. Similarly, in the United Kingdom of Great Britain and Northern Ireland, legal observers were present at the Black Lives Matter protests in 2020. This proved to be a deterring factor for the escalation of violence and provided a sense of security to protesters that were usually confronted with discriminatory over-policing. People from racially discriminated groups who often refrained from assembling were able to protest against systemic racism knowing that the police were being monitored by legal experts and that legal assistance was immediately available to them.

67. The Special Rapporteur stresses that the presence of legal monitors should be seen by the authorities as having a deterring effect for any sort of violence and not as an incitement to violence. He recalls that the work of lawyers as monitors should be aimed at having a positive impact on the understanding and respect demonstrated for the right to freedom of peaceful assembly by State authorities. When possible, he encourages legal observers to identify themselves through the use of clothing or specific signs that would allow protesters, law enforcement agents and other monitors to recognize them during demonstrations. For example, in the United States, the legal observers from the National Lawyers Guild wear neon green hats that allow them to be identified among protesters and law enforcement agents but also among themselves. When exercising this function, lawyers do not directly involve themselves as participants in assemblies. Legal practitioners who are exercising the function of monitors should maintain a certain distance from organizers and from law enforcement agents in order to preserve their neutrality. Their main function should be to observe, record and document the actions of law enforcement agents, protesters and third parties. They should

<sup>77</sup> A/HRC/45/16, para. 55.

<sup>78</sup> Human Rights Committee, general comment No. 37 (2020), para. 30.

actively intervene only when necessary, for example, to remind all parties of their rights and obligations, and the Special Rapporteur encourages authorities to facilitate the work of legal observers during peaceful assemblies.

68. The Special Rapporteur noticed that in many countries lawyers do not feel entitled to monitor assemblies or do not feel concerned with promoting and protecting the rights to freedom of peaceful assembly and of association. He believes that the widespread narrative that depicts protests as a negative and disturbing activity to society, and also depicts protesters or associations as elements prejudicing public order, contributes to the delegitimization of lawyers and legal practitioners that engage in promoting and protecting such freedoms. Empowering and strengthening the capacities of young lawyers and human rights activists through specifically tailored programmes should be a priority for civil society organizations, national bar associations and universities. Furthermore, Governments should consider lawyers and legal professionals as strategic partners in fulfilling their obligation to create and maintain an environment conducive to the enjoyment of the rights of peaceful assembly and association and, in general, to the work of human rights defenders.

69. The Special Rapporteur notes with concern that a majority of the lawyers and legal practitioners interviewed had faced threats and harassment and, in some contexts, even criminalization. The Special Rapporteur has received information regarding surveillance, confiscation of confidential documents, raids of offices, detention and disbarment of lawyers working for the promotion and protection of freedom of peaceful assembly and of association in many countries.

70. The Special Rapporteur has voiced his concern regarding the indiscriminate surveillance of those exercising their right of peaceful assembly,<sup>79</sup> but intrusive online surveillance is also used to monitor or interfere with lawyer-client communications. This practice has considerable negative impacts on access to justice, as well as on the rights to freedom of peaceful assembly and of association. When someone exercising their right to freedom of peaceful assembly or of association is detained or is in police custody, the likelihood of surveillance from the authorities increases. Authorities must ensure the confidentiality of all communications between lawyers and their clients; if needed, technical solutions to secure and protect them, including measures for encryption and anonymity, must be allowed.<sup>80</sup>

## VII. Conclusions and recommendations

71. **The Special Rapporteur reiterates that the rights to freedom of peaceful assembly and of association, and to access to justice are crucial to uphold the rule of law and to create, strengthen and expand an enabling environment. Access to justice is an integral element of the protection of the rights to freedom of peaceful assembly and of association. When access to justice is not guaranteed, people cannot fully exercise their rights to freedom of peaceful assembly and of association.**

72. **He stresses that unobstructed access to justice in the context of the rights to freedom of peaceful assembly and of association is crucial to bring to justice the perpetrators of human rights violations and abuses. Unobstructed access to justice also helps to prevent future violations and abuses and assists in the fight against impunity, in particular for killings of protesters and repression of peaceful protests.**

73. **The Special Rapporteur stresses that civil society, States and other stakeholders should acknowledge and promote the crucial role that lawyers can play in protecting these freedoms and as such, they should be considered to be strategic partners.**

74. **In order to comply with their human rights obligations and ensure access to justice in the context of the rights to freedom of peaceful assembly and of association, the Special Rapporteur recommends that States:**

<sup>79</sup> A/HRC/41/41, para. 57.

<sup>80</sup> Human Rights Council resolutions 34/7 and 38/7; and A/HRC/41/41.

- (a) Recognize, in law and in practice, the rights to freedom of peaceful assembly and of association, and ensure that any restrictions to those rights are prescribed by law, are necessary in a democratic society and are proportionate to the aim pursued;
- (b) Ensure that legislation and policies regulating the rights to freedom of peaceful assembly and of association include provisions that guarantee effective access to justice;
- (c) Eliminate de facto and de jure barriers that impede access to justice and to public information;
- (d) Adopt legislation and public policies to ensure that groups in vulnerable situations can exercise their rights to freedom of peaceful assembly and of association and can access remedies without discrimination;
- (e) Narrowly define the offence of terrorism in line with international law and ensure that counter-terrorism legislation is not designed as a way to circumvent access to justice and restrict the rights to freedom of peaceful assembly and of association;
- (f) Ensure that any violation and abuse of the rights to freedom of peaceful assembly and of association is systematically, promptly, exhaustively and independently investigated and that the perpetrators are brought to justice, even when victims do not ask for remedies, and include effective mechanisms for access to comprehensive reparations;
- (g) Strengthen the independence of investigative, administrative and judicial bodies, and establish legal safeguards against undue internal or external interference;
- (h) Recognize the important role of monitors providing independent, impartial and objective coverage of demonstrations and protests, including the factual record of the conduct of participants and law enforcement agents;
- (i) Ensure, in law and in practice, that those who are monitoring peaceful protests or reporting on them, including lawyers, have access to assemblies, can operate effectively, are not prevented or obstructed in their work by law enforcement officials, and that specific measures of prevention and protection from intimidation or physical harassment and violence are adopted;
- (j) Ensure that law enforcement agents wear easily identifiable badge numbers and that those who violate the rights to freedom of peaceful assembly and of association are held accountable for such violations by an independent and democratic oversight body or by the courts of law, and establish independent and effective mechanisms for the supervision of all public security forces;
- (k) Prevent the involvement of the armed forces in public security tasks or the control of protests;
- (l) Establish independent mechanisms to monitor and investigate the use of digital technologies for surveillance in the context of the rights to freedom of peaceful assembly and of association, with a view to ensuring that any such use is consistent with the principles of legality, necessity and legitimacy of objective;
- (m) Ensure that reviews of suspensions and involuntary dissolutions of associations are always undertaken by an impartial and independent court and are only applied in the case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in compliance with international human rights law.

75. Lastly, the Special Rapporteur encourages other actors, such as national human rights institutions, international organizations, including United Nations institutions, bodies and human rights mechanisms, civil society actors and other non-State actors, including private businesses, to continue advocating for the engagement of lawyers in the protection and promotion of the rights to freedom of peaceful assembly and of association. The Special Rapporteur also encourages bar associations to promote human rights and pro bono activities related to the protection of the rights to freedom of peaceful assembly and of association.