

**Statement by the UN Special Rapporteur on the rights to freedom of peaceful assembly and
of association, Clément N. Voule**

44th session of the Human Rights Council

9 July 2020

**Distinguished President of the Council,
Excellencies,
Colleagues and Friends,**

2020 marks the 10th anniversary of the mandate of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.

During this decade, there have been many hard-fought achievements in human rights, peace and development.

These achievements have one feature in common: They were made possible because people joined in associations and peaceful assemblies to claim their rights.

From the uprisings in Tunisia to the people's revolutions in Armenia, Ethiopia and Sudan, this decade saw a rise in social movements and peaceful protests that led to important democratic transitions. Many more used the internet and marched in the streets to expose abuse of power and rising inequality triggering significant policy changes in many countries around the world.

The world witnessed the growing strength of women's organizations and movements in their fight for gender equality. Through their activism and mobilization, women secured long awaited gains in the protection of sexual and reproductive rights in Ireland, Kenya, Pakistan and Chile, to name a few.

Around the world in the last decade, the rise of a global digital rights movement helped identify the challenges digital technologies pose to the enjoyment of human rights. They launched campaigns to educate the public, documented violations, engaged with governments and private sector and promoted innovative solutions to very complex problems.

We also witnessed how workers organizations and trade unions pushed back against abusive supply chains and exploitative business practices in the garment industry in Cambodia, Morocco, Honduras and Lesotho. They successfully lobbied for safer and more equitable workplaces.

This decade saw people freely participating in pride parades celebrating with lesbian, gay, bisexual and transgender (LGBT) community in many cities around the world.

More than ever young people have also mobilized, against violence, against racism and for an adequate response to climate change. Young students striking every Friday helped amplify the message of the scientific community and raise awareness about the urgency of climate action. Climate justice is now present in policy discussions, news analysis and business strategies.

The Black Lives Matter movement has shown us how injustice in one part of the world and mobilization can trigger significant change globally opening discussions about racism, history, violence and discrimination across borders. It has shown the power of protest and triggered significant and overdue policy changes in many places.

I could go on. There are countless of examples. What is undeniable is that during the last decade the rights to assemble and associate were essential in the human rights struggle, by enabling people to make their voices heard, advance their rights, share ideas and build partnerships to make a better world.

However, it has not been easy period. In the last decade the enjoyment of the fundamental freedoms to peaceful assembly and association have faced difficult challenges across the globe.

Experts agree that this decade has seen the most comprehensive attack against these freedoms since the end of the Cold War.

This trend has been extensively documented by my mandate. Over these 10 years, we have seen many setbacks, egregious human rights violations and an increasingly complex threats.

My report takes stock of the 10 years since the creation of the mandate and reflects on the progress made possible by the work of the Special Rapporteur. The analysis shows the key role the mandate has played promoting and protecting these rights in these challenging times.

One: The work of the Special Rapporteur contributed to articulate, reinforce and expand international norms on the enjoyment of the rights to peaceful assembly and association and promote best practices.

As a result, we now have a more robust international legal framework to protect these freedoms.

Two: The work of the Special Rapporteur has been especially successful at mapping global challenges and trends on restrictions facing these rights.

As a result, we have a deeper understanding of the nature of the threats and we are better equipped to address them.

Three: The work the Special Rapporteur has elevated the importance of assembly and association rights at the United Nations.

This work resulted in important resolutions of this Council addressing civil society and peaceful protests. It also contributed to the Human Rights Committee's current efforts to develop a general comment on article 21 of the International Covenant on Civil and Political Rights.

Four: Our work has broadened the support base for the rights to freedom of peaceful assembly and of association.

As a result, more actors in the business and development communities are recognizing their shared interest in advocating for and protecting these rights.

Five: The work of the Special Rapporteur has impacted domestic laws, decisions and policies.

Decisions adopted by the High Court of South Africa, the Supreme Court of Mexico, the Parliament of Georgia and the Governments of the United Kingdom, Tunisia and Ecuador are highlighted in my report as examples of the positive impact of country engagement by the mandate holders.

Six: Finally, one of the most significant results of the work of the Special Rapporteur was the building of a global movement to promote an enabling environment for the enjoyment of the rights to freedom of peaceful assembly and association.

We now have vibrant coalitions of civil society actors and government allies seeking to protect these fundamental freedoms. We now have a movement that shares a vision of the changes needed and strategies to ensure these rights can be fully enjoyed by everyone.

Madame President,

When I set out to reflect on the achievements of the mandate and its future agenda, I could not have imagined that a devastating pandemic would befall upon us and that a human rights crisis of great magnitude would follow.

My report could not ignore the impact of COVID19 on the rights to freedom of peaceful assembly and of association.

I am concerned about the adoption of sweeping emergency laws and measures to rule by decree that have been adopted in several countries and geared towards cementing control and cracking down on oppositional figures rather than ensuring public health.

Civil society organizations are facing numerous undue restrictions on their work and are being excluded from decision-making.

Elections are being postponed in all regions of the world without full transparency or consultation.

Let me be clear: Assembly and association rights empower communities to respond and adapt to changes brought by this crisis and to be better prepared for similar emergencies in the future.

No government can solve the crisis alone; civil society should be a strategic partner.

Civil society has an important role in helping countries mitigate, adapt and transform from the devastating and long-term socioeconomic effects of this crisis.

In the report I reiterate ten key principles to respect these fundamental freedoms during the COVID19 response and recovery efforts. I would like to take this opportunity to highlight only four of the 10 principles:

One: Public health emergencies should not be used as a pretext for rights infringements.

While some restrictions are permissible, the crisis is no justification for excessive force to be used when dispersing assemblies, nor for disproportionate penalties to be imposed.

It is not an excuse for the criminalization of civil society actors, for government secrecy, or for gender-based violence against women human rights defenders.

Second: Freedom of association and of assembly online should be respected;

In this time when physical assemblies are restricted, it is all the more necessary that access to and use of the internet be ensured.

In addition to refraining from restrictions such as internet shutdowns or online censorship, I called on States to take measures to ensure connectivity is affordable.

Three: Civil society's participation in multilateral institutions should be secured.

The UN is no exception. UN human rights bodies, such as this Council, should ensure civil society can access and participate in its processes.

UN Country Teams should be actively engaging with civil society around Covid-19 responses and human rights should be strengthened.

Four: Popular calls for reform are addressed.

The demands that sparked last year's protest movements have not disappeared. Covid19 is likely to elevate those demands. I expect a new wave of peaceful protests to emerge as gathering restrictions ease.

Governments should prioritize addressing people's demands and calls for reforms. We cannot accept a future where the voices and concerns of those living at the margins, the most vulnerable and at risk, are further silenced.

Madame President,

My report concludes with a look at the future and proposes a set of strategic issue areas that need to be prioritized in developing a future agenda for the promotion and protection of the rights to freedom of peaceful assembly and of association.

This list draws from contributions I secured through consultations with States, national human rights institutions and civil society organizations, which I am grateful for.

The Secretary General Antonio Guterres recognized in his Human Rights Call to Action that the shrinking of civic space “requires policy consistency across the United Nations system”.

We need to act on this powerful call with a renewed commitment to protect the rights to freedom of peaceful assembly and association.

Madame President,

I visited Sri Lanka from 18 to 26 July 2019 at the invitation of the Government.

My visit took place at a crucial moment when the country was heading towards Presidential elections. At the time, I hoped that my visit would be an opportunity to strengthen democratic gains made by the country, ensuring that these gains remain sufficiently strong to weather any attempt to roll them back.

I am grateful to the Government for its excellent cooperation and support, before, during and after the visit.

You will see that this report acknowledges some key achievements with regard to democratization, good governance, post-conflict reconciliation and transitional justice. It also highlights areas where there has been a lack of progress, particularly in implementing some of the commitments contained in Council resolution 30/1.

With regard to the rights to freedom of assembly and association, I noted that national legislation adequately protects the rights to freedom of peaceful assembly and of association for the most part.

Yet the unequal application of the laws, including informal refusal to enact laws at an administrative level, seriously affects the enjoyment of these rights. Ethnic and religious discrimination, mistrust in State authorities and the heavy militarization of certain areas continue to constitute significant obstacles in order to fully realize the enjoyment of these rights in the country.

I would like to recognize the vital role that civil society has played in the promotion of democracy, providing checks and guidance on governmental actions in the promotion of universal human rights standards. Their actions have been instrumental in the widening of democratic space that the country experienced since 2015, and they will continue to be instrumental in the fight to maintain and increase those gains.

However, people’s confidence in State institutions and progress towards sustainable democracy and development may be jeopardized by a climate of impunity. I also note that more must be done to enhance social cohesion, to unite people and communities, embracing their differences and rebuilding trust in order to work towards the full enjoyment of human rights for all in Sri Lanka.

At the time of my visit, and notwithstanding the valuable progress made in democratisation in the last five years, I perceived a prevailing apprehension among civil society, who feared there could be rollbacks on these gains.

Fear that important institutions that safeguard democratic rights would be dismantled, a shift back to media restrictions, governmental opacity and a growing climate that requires self-censorship.

Almost one year after my visit, and slightly over six months after Presidential elections were held, I am deeply concerned that the context I found at the time of the visit has already rapidly changed.

For example during the visit, I gladly noted that in 2016 the NGO Secretariat had moved to the Ministry of National Integration, Official Languages from the Ministry of Defence.

However, I was informed that on 10 December 2019 the NGO Secretariat was transferred back to the Ministry of Defence reportedly on the grounds that the affairs of the NGOs should be coordinated within a National Policy Framework.

I was also informed that a February 2020 report of the Parliamentary Sectoral Oversight Committee on National Security recommended that NGOs which are not registered under the NGO secretariat should be declared illegal and sanctioned. The same report recommended mandatory registration of NGOs.

With regard to freedom of assembly, I learnt that in February 2020 a “demonstration site” was established close to the Presidential Secretariat in Colombo as a designated venue for protests and that protests held elsewhere in the capital will be sanctioned.

While certain parties may have welcomed the initiative due to its immediate benefits of easing traffic and non-disruption of the day to day life, I would like to recall that the right to peaceful assembly is often exercised in public places in order to attract the attention of the State, and the general public, which in turn has the effect of facilitating dialogue, pluralism, tolerance and broadmindedness.

Therefore, restricting protests on the ground that protests are an “inconvenience to the general public” goes against the very objective of a protest. Moreover, the Human Rights Committee has noted that legislation specifying a single remote area in which assemblies can be conducted unduly limits the right to freedom of expression and assembly”.

I also received several reports of incidents aimed at stifling dissent expressed through peaceful assemblies:

- For example incidents of university students refused entry into the university premises after they protested in Jaffna;
- Police attacks and threats against groups of employees protesting or protesters against microfinance loan schemes;

- Forceful removal of a hut set up by a group of disabled soldiers protesting in the “designated protest site”
- Intimidation, arrest and excessive use of force against individuals protesting with regard to COVID 19 related measures including a three week long indefinite curfew in Kandi district

It was also brought to my attention that the level of surveillance, harassment, interrogation and intimidation of civil society actors in all parts of Sri Lanka has increased, including cases of reprisals against civil society actors who returned to Sri Lanka after attending the Human Rights Council in March 2020.

I would like to express concern regarding the Presidential Directive of 2 June 2020 establishing a Presidential Task Force to build a “secure country, disciplined, virtuous and lawful society” which is led by the Secretary of Defence and comprised of mainly military officials.

The Task Force is mandated, amongst others, with taking necessary immediate steps to curb the alleged illegal activities of social groups that are quote: “harmful to the free and peaceful existence of society at present in some places of the country”. I am deeply concerned that this approach may undermine freedom of expression and assembly and curtail space for government’s critics and peaceful dissents.

As in almost all the countries of the world, the COVID 19 pandemic has not made the exercise of the rights to freedom of assembly and association easier in Sri Lanka, to the contrary.

I strongly believe that crisis cannot be used as an excuse to justify blanket restrictions to these rights and I would like to recall here the 10 principles I issued and that must be upheld in crisis contexts.

I urge the Government to ensure that no acts of reprisals, threats or intimidation occur against those under its jurisdiction who have interacted with me or cooperated with the United Nations.

In light of how the context has evolved, I am concerned about the fate of hard fought gains in relation to civic space and the rule of law, including in the run up to the 5 August parliamentary elections.

Madame President

It was a great honour for me to be the first Special Rapporteur to conduct an official visit to Zimbabwe, in September last year.

I welcome the efforts and steps taken by the government that have opened democratic space and enabled a multi-party democratic political system. However, from the series of meetings that I held with different stakeholders around the country, it is apparent that since August 2018, Zimbabwe is facing serious challenges in the political, economic and social sphere which generate frustration and anxiety among a large number of Zimbabweans, as well as fear about the future.

I acknowledge that the current Constitution, adopted in 2013, includes an expansive bill of rights with Sections 58 and 59 specifically promoting and protecting the rights on freedom of peaceful assembly and of association including the freedom to demonstrate and petition and various pieces of legislation have been enacted to give effect to these constitutional rights

While I welcome the repeal of the much criticized Public Order and Security Act (POSA), I remain concerned that the current legislation which was enacted to replace POSA – the Maintenance of Peace and Order Act (MOPO) still does not provide for the full exercise of the right to peaceful assembly. .

During my visit, I advised the authorities that assemblies should be presumed lawful and peaceful and that while limitations to this right are permissible, they should meet international law standards, which require the government to explicitly justify any limitation, to explain the necessity of any limitation, its legality and proportionality.

Under international law, it is not enough for a government to say that demonstrations are likely to pose a national security threat. A government has the obligation to identify the specific risks it is concerned about, the measures it will implement to mitigate such risks and the limited number of restrictions. Blanket prohibitions are rarely lawful. The role of the government is to mitigate risks to enable the enjoyment of the fundamental right to peaceful assembly.

In Zimbabwe, the use of military force to quell protests and demonstrations has had an adverse impact, including in the minds of the population. These forces are not adequately trained to handle demonstrations.

I am also concerned that the MOPO Act contains notification requirements for gatherings, including cumbersome administrative processes – that are equivalent to an authorization, rather than a notification regime.

I firmly believe that the exercise of the right to freedom of peaceful assembly should not be subjected to authorization. At most, a prior notification procedure is sufficient, in order to facilitate peaceful assemblies and to take measures to protect public safety and order and the rights and freedoms of others.

Moreover, spontaneous assemblies should be recognized in law and exempted from prior notification in conformity with the jurisprudence of the Human Rights Committee that reaffirms article 21 of the covenant on civil and political rights contains an obligation to facilitate spontaneous assemblies without interference.

I would like to reiterate my call to the government to adopt a human rights-based approach that facilitates assemblies as an integral human right of every person. An approach that allows specific, targeted, legal and measured responses to prevent, contain and respond to specific incidents of violence in the context of protests. An approach that facilitates the police force to conduct professional democratic policing.

I was also informed that internet shutdowns were common during the crackdown of protests further limiting the right to peacefully assembly. I strongly believe that network disruptions are in clear violation of international law and cannot be justified under any circumstances.

Network shutdown orders often lack a legal basis and these events in Zimbabwe were no exception. In this sense, I applaud the High Court's decision ruling that the Minister of State responsible for national security in the President's Office did not have the authority to issue any directives in terms of the Interception of Communications Act.

I have also heard extremely disturbing reports of excessive, disproportionate and lethal use of force against protestors, through the use of tear gas, batons and live ammunition.

I am encouraged that the government took steps to investigate the crackdown of the protests of 1 August 2018, after the harmonised national elections, when demonstrators took to the streets of Harare demanding the immediate release of the election results. On this occasion, what started out as a peaceful protest turned into chaos and included indiscriminate violent acts by some elements. As a result of the use of lethal force by the military who intervened during the protests at least six persons were killed and many others tortured and injured.

In January 2019 protests were again met with use of lethal and excessive use of force, mass arbitrary arrests and torture.

The right to peacefully assemble is a basic pillar in any democracy and should not be denied and feared. On the contrary, it should be allowed and encouraged, as its intrinsic value is to allow individuals and groups to express aspirations and concerns publicly. It is in the interests of the State to allow public and peaceful assemblies as a "release valve" in order to avoid recourse to other means of dissent and disagreement that are not desirable and can be harmful to society as a whole. It is a right and one that the State has the obligation to enable and protect.

Let me now focus on the right to freedom of association, which is guaranteed in the Constitution and is currently regulated through legislation such as the Private Voluntary Organisations Act (PVOA) and the Deeds Registries Act.

Registration of associations, including NGOs, is required by the PVOA and I was informed that the registration procedure is onerous, lengthy and complex in nature.

I was also informed that NGOs are under constant surveillance and repeatedly heard accounts of NGOs who need to submit letters of notification to the police informing of their intent to hold public or even private meetings.

Trade union activities are guaranteed by the Constitution and regulated mainly by the Labour Act and the Public Service Act.

Of particular concern to me are sections 102 and 104 of the Labour Act. Section 102 which refer to "essential services" and provides a very wide and open discretion to the Minister of Labour to declare what constitutes an essential service from which workers are denied the right to strike.

In turn, Section 104 provides that workers embarking on strike should give a 14 day written notice to the regulating authority. Failure to do so renders the strike illegal, and such workers will not enjoy the right to protest.

Madame President,

Security sector reform In Zimbabwe and capacity building of reformed structures is necessary to build trust in the State and prevent unnecessary and disproportionate use of force, intimidation, surveillance, including of civil society and social movement leaders.

It is also crucial to withdraw all criminal charges against workers' representatives and civil society leaders who were arrested for exercising their right to freedom of peaceful assembly and association.

I urge the Government to ensure that no acts of reprisals, threats or intimidation occur against those under its jurisdiction who have interacted with me or cooperated with the United Nations.

I equally encourage the government to continue to open up the country for the visits of the United Nations Special Procedures in order to benefit from the expertise of these mechanisms.

I would like to stress that my mandate remains available to the government for any support regarding the implementation of the rights to freedom of peaceful assembly and of association, technical or otherwise. Furthermore, at the government's invitation, I would be delighted to conduct a follow up country visit should the opportunity arise.

I am grateful to have had the opportunity to visit Zimbabwe during such a critical and defining period, I strongly believe that Zimbabweans are peace loving and resilient people and that the government should capitalize on this value and facilitate an unfettered exercise of democratic fundamental freedoms.

Madame President,

In the last period I sent 168 communications to 81 states and 6 other actors and I received 105 responses.

I wish to thank countries who have fully engaged and cooperated with my mandate and provided detailed information in response to the allegations addressed in the communications sent. I urge those States who have not responded to my communications to do so, and I look forward to receiving these responses soon.

Of those communications, 13 involved cases of reprisals taken against individuals because of their cooperation with the United Nations. I take this opportunity to call upon States to end all acts of reprisals and refrain from resorting to excessive force while managing peaceful protests.

Excellencies,

Over the last decade we have made important progress in the protection of the rights to freedom of peaceful assembly and of association. I am proud to celebrate these successes with you today. While we have a long road ahead, I am convinced we can continue effecting positive change in the future.

Our actions, however, need to match the severity of the challenges we are confronting.

As Special Rapporteur I commit to strengthen efforts to promote and defend these freedoms and reiterate my openness to collaborate with the Council and actors at the UN system to ensure our commitment is translated into concrete results and actions.

Thank you, Madame President.