

III. Best practices related to the rights to freedom of peaceful assembly and of association

A. Common principles

1. Legal framework

12. The rights to freedom of peaceful assembly and of association serve as a vehicle for the exercise of many other civil, cultural, economic, political and social rights. The rights are essential components of democracy as they empower men and women to “express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable” (Council resolution 15/21, preamble). Such interdependence and interrelatedness with other rights make them a valuable indicator of a State’s respect for the enjoyment of many other human rights.

13. Resolution 15/21 reaffirms that “*everyone* has the rights to freedom of peaceful assembly and of association” (emphasis added). This provision must be read jointly with article 2 of the International Covenant on Civil and Political Rights, which stipulates that “each State Party undertakes to respect and to ensure to *all* individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”(emphasis added)., and article 26 thereof, which guarantees to all individuals equal and effective protection against discrimination on grounds identified in article 2. This applies inter alia to minors, indigenous peoples, persons with disabilities, persons belonging to minority groups or other groups at risk, including those victims of discrimination because of their sexual orientation and gender identity (see Council resolution 17/19), non-nationals including stateless persons, refugees¹ or migrants, as well as associations, including unregistered groups. The rights to freedom of peaceful assembly and of association are key human rights in international human rights law, which are enshrined in article 20 of the Universal Declaration of Human Rights.

14. The right to freedom of peaceful assembly is guaranteed in article 21 of the Covenant on Civil and Political Rights and the right to freedom of association in article 22. They are also reflected in article 8 of the International Covenant on Economic, Social and Cultural Rights and in other specific international² and regional human rights treaties or

¹ Article 15 of the Convention relating to the Status of Refugees

² Article 7 (c) of the Convention on the Elimination of All Forms of Discrimination against Women; International Labour Organization (ILO) Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise.

instruments,³ including the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (art. 5).

15. According to article 4 of the International Covenant on Civil and Political Rights, the right of peaceful assembly and the right to freedom of association are not absolute rights. Resolution 15/21 (OP 4) makes clear that they “can be subject to certain restrictions, which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.

16. The Special Rapporteur emphasizes that only “certain” restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception. He refers to general comment No. 27 (1999) of the Human Rights Committee on freedom of movement: “in adopting laws providing for restrictions ... States should always be guided by the principle that the restrictions must not impair the essence of the right ... the relation between right and restriction, between norm and exception, must not be reversed”. As a result, when States would like to restrict these rights, all the above conditions must be met. Any restrictions must therefore be motivated by one of the above limited interests, have a legal basis (be “prescribed by law”, which implies that the law must be accessible and its provisions must be formulated with sufficient precision) and be “necessary in a democratic society”.

17. As outlined by the Organization for Security and Co-operation in Europe (OSCE), “the word ‘necessity’ does not mean ‘absolutely necessary’ or ‘indispensable’, but neither does it have the flexibility of terms such as ‘useful’ or ‘convenient’: instead, the term means that there must be a ‘pressing social need’ for the interference”.⁴ When such a pressing social need arises, States have then to ensure that any restrictive measures fall within the limit of what is acceptable in a “democratic society”. In that regard, longstanding jurisprudence asserts that democratic societies exist only where “pluralism, tolerance and broadmindedness”⁵ are in place. Hence, States cannot undermine the very existence of these attributes when restricting these rights. Furthermore, the Special Rapporteur refers to general comment No. 31 (2004) of the Human Rights Committee on the nature of the general legal obligation imposed on States parties to the Covenant, which provides that “where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights” (para. 6).

18. In addition, only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 of the Covenant on Civil and Political Rights) or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (art. 5) should be deemed unlawful.

19. The Special Rapporteur further particularly emphasizes that the right to life and the right to be free from torture or cruel, inhuman or degrading treatment or punishment should be guaranteed by States to all individuals under all circumstances and at all times, including in the context of the exercise of the rights to freedom of association and of peaceful assembly, as prescribed by article 4 of the Covenant. The Special Rapporteur recalls that,

³ It is worth noting that the word “peaceful” is absent from article 11 of the African Charter on Human and Peoples’ Rights.

⁴ OSCE/Office for Democratic Institutions and Human Rights (ODIHR), *Key Guiding Principles of Freedom of Association with an Emphasis on Non-Governmental Organizations*, para. 5.

⁵ European Court of Human Rights, *Handyside v. the United Kingdom*, application No. 5493/72, 7 December 1976, para. 49.

according to the Human Rights Committee, during a state of emergency, the rights to freedom of peaceful assembly and of association shall not be derogated since “the possibility of restricting certain Covenant rights under the terms of, for instance ... freedom of assembly is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation”.⁶

2. Environment in which these rights are exercised

20. The rights to freedom of peaceful assembly and of association are constitutionally guaranteed in most countries. In many States, specific domestic laws further govern the exercise of these rights. However, in many instances, domestic legislation in place listed grounds additional to those already prescribed by international human rights law or ambiguous. The Special Rapporteur warns against arbitrary interpretations of such grounds for restriction. He further cautions against an environment in which the enjoyment of these rights is seriously impeded.

21. The legitimate combat against terrorism, and other security considerations, has been used as a justification for the adoption of a state of emergency or other stricter rules to void the rights to freedom of peaceful assembly and of association. In many instances, emergency regulations have been used to clampdown on freedoms of peaceful assembly, of association and of expression. On different occasions, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed in a report to the General Assembly that “States should not need to resort to derogation measures in the area of freedom of assembly and association. Instead, limitation measures, as provided for in ICCPR, are sufficient in an effective fight against terrorism” (A/61/267, para. 53).

22. Country-specific contexts sometimes extinguish the rights to freedom of peaceful assembly and of association. In situations of armed conflict, individuals who desire to assemble and associate freely, even to address emergency needs or to call for the end of violence, may meet drastic restrictions that may amount to a strict denial of their rights.

23. The context of elections may also heavily impact on the rights to freedom of peaceful assembly and of association. This is particularly the case when assemblies are systematically prohibited or when individuals active in associations promoting transparent and fair electoral processes and defending democratic principles are subject to harassment and intimidation for their civic activism.

⁶ General comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 5.