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

## **Advancing accountability and ending impunity for serious human rights violations related to the exercise of the rights to freedom of peaceful assembly and of association**

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

### *Summary*

In the present report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, examines the practical gaps in accountability for serious crimes committed against activists and protesters. In the report, based on a victim-centred approach, the Special Rapporteur makes recommendations to States and the international community to advance accountability and end impunity for such crimes, to ensure the fundamental freedoms of peaceful assembly and of association can be effectively exercised.

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## I. Introduction

1. Civil society activists, individuals and groups are facing increased repression and serious human rights violations for exercising their rights to freedom of peaceful assembly and of association. Many survivors of such violations have been left without justice or reparations. The endemic impunity for such violations has generated cycles of repression that gravely undermine the enjoyment and protection of those fundamental freedoms, which are essential components of democracy and for the defence of all human rights. Impunity for such violations has caused and augmented crises and conflict, and contributed to the rising challenge of authoritarianism around the world.

2. In the present report the Special Rapporteur on the rights to freedom of peaceful assembly and of association examines the victims' needs for justice in the face of the persistent accountability gaps for serious human rights violations committed against those exercising or attempting to exercise their fundamental rights to freedom of peaceful assembly and of association.

3. The serious human rights violations addressed in the present report include extrajudicial or summary executions, including killings as a consequence of the use of excessive and unlawful force by law enforcement agents in the context of protests; enforced disappearances; torture and other forms of cruel, inhuman or degrading treatment or punishment, including sexual and gender-based violence; and prolonged arbitrary detention. The Special Rapporteur also considers mass atrocities, constituting international crimes, that are committed in the context of the rights to freedom of peaceful assembly and of association.

4. In the report, the Special Rapporteur seeks to identify pathways for ending impunity for such crimes while ensuring restoration of the rights to freedom of peaceful assembly and of association. Important steps include investigating, prosecuting and punishing perpetrators, providing reparations to victims and institutional and policy reforms, including measures aimed at establishing an honest, comprehensive and public account of past violations. The Special Rapporteur recalls that access to justice and remedies is an integral element of the protection of the rights to freedom of peaceful assembly and of association.<sup>1</sup> The report is primarily directed to States, but it also examines the role the international community and others can play in promoting and supporting accountability.

5. The present report draws on 47 submissions from civil society and 7 from States,<sup>2</sup> as well as information obtained through dedicated global and regional consultations with 95 activists, protesters, lawyers, victims' representatives and national human rights institutions. It draws on years of regular engagements with civil society, victims and authorities, including during country and academic visits, and hundreds of communications sent to States.

## II. State obligations

6. Under international human rights law, States have a duty to respect, protect and fulfil the rights of those within their jurisdiction and to provide effective remedies when they are infringed.<sup>3</sup> In addition, States have the obligation to investigate alleged violations promptly, thoroughly and effectively through independent and impartial bodies, to bring those responsible for serious crimes to justice and provide reparations. Those obligations arise in particular in respect of the crimes of torture and similar cruel, inhuman and degrading

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<sup>1</sup> A/HRC/47/24.

<sup>2</sup> A full list of submissions will be available at <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-mandate-special-rapporteur-rights-freedom-peaceful-assembly-and>.

<sup>3</sup> See Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2; International Convention on the Elimination of All Forms of Racial Discrimination, art. 6; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14; Convention on the Rights of the Child, art. 39; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 13; American Convention on Human Rights, art. 25; and African Charter on Human and Peoples' Rights, art. 7.

treatment, summary and arbitrary killings and enforced disappearance. The failure to bring to justice perpetrators of such violations could in and of itself constitute a breach of the International Covenant on Civil and Political Rights and impunity for these violations “may well be an important contributing element in the recurrence of the violations”.<sup>4</sup> Reparations require restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>5</sup> Multiple forms of remedy are often necessary. The obligation to provide a remedy is owed to all who have suffered violations, but also to society as a whole to ensure non-repetition.

7. The right to truth is also essential for ending impunity and to safeguard against the recurrence of violations. The right to know incorporates the “inalienable right to the truth”, the duty of States to “preserve memory” and the victim’s right to know, such as to “know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate”.<sup>6</sup>

8. States have also committed to ensuring accountability, as interrelated to achieving peace and preventing atrocities. The Special Rapporteur recalls that in Sustainable Development Goal 16, States committed to “promote the rule of law at the national and international levels and ensure equal access to justice for all” by 2030. Further, under the concept of the responsibility to protect, the Secretary-General has emphasized accountability as a means of preventing atrocity crimes.<sup>7</sup>

### III. Obligations of the international community

9. Under their obligations derived from international humanitarian and human rights law, States have the responsibility to respond to situations of violations of human rights, including gross and systematic violations when the State concerned is failing to fulfil its own obligations. International cooperation for the protection of human rights is essential to advance victims’ access to justice and remedy, such as through the United Nations human rights mechanisms, including the Human Rights Council, in order to scrutinize the human rights performance of States and ensure accountability.

10. Moreover, for implementing the “responsibility to protect” principle, the Secretary-General has called on the international community to “consider all legal options and practical steps to ensure justice for all victims and contribute to the prevention of future violations” when States fail to prosecute those responsible for atrocity crimes in their territory.<sup>8</sup> When States are unable or unwilling to conduct effective investigations into or prosecutions of serious crimes under international law, in their jurisdiction, international and internationalized criminal tribunals may exercise concurrent jurisdiction. In such situations, States must fully satisfy their legal obligations in respect of international and internationalized criminal tribunals: enact domestic legislation, implement applicable obligations to apprehend and surrender suspects and cooperate. Further, States should undertake effective measures, including the adoption or amendment of internal legislation, to enable their courts to exercise universal jurisdiction over serious crimes under international law, in accordance with applicable principles of customary and treaty law.<sup>9</sup>

11. The Special Rapporteur recalls that in the 2005 World Summit Outcome, Heads of State and Government committed to utilizing regional and subregional arrangements to encourage and help each other to fulfil their primary responsibility to protect. Collaboration is essential so that States act swiftly when serious violations of the rights of those exercising

<sup>4</sup> Human Rights Committee, general comment No. 31 (2004), para. 18.

<sup>5</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

<sup>6</sup> See E/CN.4/2005/102/Add.1, and Inter-American Commission on Human Rights, *The Right to Truth in the Americas* (2014).

<sup>7</sup> See A/71/1016-S/2017/556.

<sup>8</sup> Ibid, para. 24.

<sup>9</sup> See E/CN.4/2005/102/Add.1.

their freedoms occur, in order to prevent further deterioration and the commission of atrocities.

#### **IV. Types of serious human rights violations raised by the mandate**

12. Between the beginning of the mandate in 2010 and 31 March 2023, the present and previous Special Rapporteurs sent 1,982 communications. The majority of them referred to serious human rights violations committed against individuals and/or groups for exercising their fundamental rights and many presented multiple violations: 588 referred to arbitrary detention; 380 to torture or cruel, inhuman or degrading treatment; 197 to disappearances or abductions; and 390 to extrajudicial executions or killings, including as a consequence of the excessive use of force in the context of protests, during which hundreds of individuals have been killed or seriously injured, including protesters, human rights defenders, journalists and medical personnel. The Special Rapporteurs have issued 249 communications related to various forms of violence against women activists and protesters, including sexual violence.<sup>10</sup> Women's rights activists, racial justice activists, lesbian, gay, bisexual, transgender, intersex and queer activists, leaders of indigenous and other minority communities and children often face aggravated risks and are least likely to receive remedy.

13. The Special Rapporteur has also documented the criminalization and judicial harassment of activists and protesters, as well as digital harassment and attacks, which are often connected to or lead to the above-mentioned serious violations. Serious violations create a chilling and threatening environment for civil society as a whole and prevent individuals and groups from joining associations or taking part in assemblies to defend rights, thereby diminishing the protection of rights and the inclusive nature of communities.

#### **V. Gaps and barriers to accountability**

##### **A. Lack of political will and deliberate denial of responsibility**

14. Lack of political will remains a major challenge to advancing accountability for serious crimes against activists and protesters, as States often refuse to recognize individuals' rights to freedom of peaceful assembly and of association; deny that the crimes occurred, even where widespread and systematic violations have taken place; and disavow responsibility.

15. There is a growing tendency for States to depict protests and human rights activism as criminal and/or a threat to national security or public order, instead of enabling, facilitating and protecting rights. Instead of addressing the excessive use of force by law enforcement agents, States frequently blame "violent protesters", "outside agitators", "foreign agents" or others. Rather than taking measures to address the legitimate concerns raised by civil society, activists, social movements and protesters, States present them as enemies, resorting to unnecessary use of force and other unlawful and arbitrary measures to silence and suppress them. Such narratives help entrench impunity, as repression of the human rights of activists and protesters is legitimized, while victims of repression are criminalized and denied effective remedies. The Special Rapporteur reiterates that such antagonistic narratives should be dropped and replaced by policies and approaches towards respecting and enabling those fundamental freedoms.

16. The Special Rapporteur also expresses concern over the tendency by some States to stigmatize and vilify people exercising their rights to freedom of peaceful assembly and of association as "terrorists", "criminals" and/or "traitors". In addition to the general incitement advanced by such statements, authorities have at times issued explicit calls for repression of

<sup>10</sup> See, for example, communications [EGY 10/2013](#), [CHL 4/2019](#), [SDN 6/2022](#) and [IRN 23/2022](#). All communications and replies thereto mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

activists and protesters, including by calling for, encouraging and/or condoning repressive actions by the security forces. Such narratives by the authorities undermine public trust and pre-emptively prejudice and limit access to justice.

## **B. Evading or deliberately obstructing accountability**

17. States have misused or abused a number of other measures that have obstructed accountability, or aimed at evading it, for serious abuses of activists and protesters, including imposing legal and structural barriers. The Special Rapporteur recalls that barriers to access to justice should never be used as deterrents undermining the essence of rights.

18. Legislation to combat terrorism, cybercrime laws, states of emergency and other broad and ambiguous security-related pieces of legislation have been misused and instrumentalized by States as tools to suppress and crack down on activists and protesters, and legitimize abuses by States. Such laws provide sweeping powers to law enforcement entities and, as such, exempt them from accountability. On the other hand, activists and protesters have faced aggravated charges and long-term sentences in relation to their activism under anti-terrorism measures and laws relating to sedition or national security. The mandate of the Special Rapporteur has issued 382 communications since 2011 related to anti-terrorism measures being deliberately misused or abused by States to repress the rights to freedom of peaceful assembly and of association.

19. Such laws have been used to try and imprison activists and protesters by specialized and military courts, placing them outside the protection of the civilian judiciary system and infringing on their rights, including due process and fair trial rights. The Special Rapporteur has observed many cases of activists and protesters imprisoned for long terms by such courts, following summary trials, who have been subjected to enforced disappearances, torture and other cruel, inhumane or degrading treatment or punishment, and prolonged arbitrary detention, without remedy.<sup>11</sup> By imposing the death penalty following an unfair trial, such courts have also violated the right to life.<sup>12</sup> The Special Rapporteur has called on States to ensure that civilians are not tried by military tribunals for exercising their freedoms. The Human Rights Committee and the Committee against Torture have also noted that trials of civilians by military or special courts may raise serious problems regarding the equitable, impartial and independent administration of justice.<sup>13</sup>

20. Furthermore, the Special Rapporteur has consistently raised concerns about States exploiting the lack of an international framework to regulate the use of digital surveillance tools and using such tools, including facial recognition, to target and silence activists and protesters with impunity. States should prohibit the use of surveillance techniques for the indiscriminate and untargeted surveillance of those exercising the right to peaceful assembly and association, both in physical and online spaces. The Special Rapporteur has called for a moratorium on the use and sale of surveillance tools until adequate safeguards to protect human rights, including freedom of peaceful assembly and of association, are in place.<sup>14</sup>

21. Also concerning is the tendency of States to provide law enforcement agents with immunity, or with broad powers and unrestricted use of force, including lethal force, on the grounds of national security and public order, which is contrary to the principles of necessity and proportionality. Moreover, the Special Rapporteur has received reports that some States have granted amnesties or pardons, including in relation to the use of unlawful force during protests, thus encouraging impunity for such abuses. Equally concerning are laws providing general immunity to law enforcement agents. The Special Rapporteur, together with other experts, has called for such immunity to cease.<sup>15</sup>

<sup>11</sup> See, for example, <https://www.ohchr.org/en/press-releases/2021/12/un-experts-condemn-conviction-pakistan-human-rights-defender-and-minority>.

<sup>12</sup> See communication EGY 7/2021.

<sup>13</sup> See Human Rights Committee, general comment No. 36 (2018) and CAT/C/CUB/CO/3.

<sup>14</sup> See communication OTH 211/2021.

<sup>15</sup> See <https://www.ohchr.org/en/press-releases/2021/02/usa-un-experts-urge-far-reaching-reforms-policing-and-racism>.

22. The use of State-sponsored militias and undercover plain clothes security forces during the policing of protests make it difficult to identify the perpetrators responsible. The increasing use of the armed forces and paramilitary forces to carry out law enforcement duties in response to assemblies has also obstructed accountability, since such forces act outside the command and oversight of civilian bodies. The growing militarization of law enforcement institutions, tactics and equipment is concerning, as States seek to increase control and limit and suppress assemblies on the pretext of national security and public order.<sup>16</sup> Recently the Special Rapporteur raised serious concerns over Mexico transferring the public security functions under the military control of the Ministry of Defence.<sup>17</sup>

23. States also have sought to deliberately obstruct evidence-gathering through preventing the monitoring of human rights violations in the context of protests; imposing blanket Internet and mobile access cuts prior to and during protests; targeting human rights defenders, journalists and monitors; and preventing activists and the independent media from investigating and publishing accounts of human rights violations. Moreover, State-owned and State-sponsored media have been used to foster the narrative of States, portraying activists and protesters as “criminals” to legitimize heavy-handed police actions to disperse protests, while stigmatizing and revictimizing survivors.

### **C. Importance of the independence of the justice system**

24. The existence of independent, impartial and competent judicial institutions, including judges and prosecutors, is an absolute right and not subject to any exceptions. These attributes are also essential for guaranteeing effective accountability for serious violations of the rights of activists and protesters.

25. However, the Special Rapporteur has observed that a growing number of States have instrumentalized the criminal justice system as a tool through which they have targeted and prosecuted political opponents, human rights defenders and protesters, while shielding perpetrators of serious rights violations from prosecution. Law enforcement, prosecutorial offices and the judiciary, when acting under undue political influence or bias, have been unwilling to prosecute State actors and have thereby obstructed access to justice. States should guarantee the independence of the judiciary and all governmental and other institutions must respect and conform to the independence of the judiciary.<sup>18</sup>

### **D. National accountability efforts**

26. In the present section, the Special Rapporteur examines national accountability efforts in respect of serious human rights violations committed against activists and in the context of protests, and identifies key shortcomings and relevant positive steps that can be leveraged.

#### **1. Investigations**

27. States should uphold their responsibility to investigate all allegations of serious human rights violations related to associations and assemblies. The Special Rapporteur recalls that adequate, impartial and differentiated investigation is key to ensuring the collection of evidence and delivering accountability to victims. According to the Minnesota Protocol on the Investigation of Potentially Unlawful Death, investigators should, to the extent possible, collect and confirm all testimonial, documentary and physical evidence, and determine individual responsibilities.

28. The Special Rapporteur welcomes efforts by some States to investigate allegations of serious crimes committed against activists and protesters, including setting up commissions of inquiry. However, these have often been half-hearted efforts, investigative mechanisms have often not been independent or impartial and they have failed to result in effective prosecutions. Investigations have often failed to comply with the requisite standards, such as

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<sup>16</sup> See [A/HRC/50/42](#).

<sup>17</sup> See communication [MEX 11/2022](#) (in Spanish only).

<sup>18</sup> See Basic Principles on the Independence of the Judiciary.

the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the Minnesota Protocol. There have been some positive efforts in Nigeria with setting up regional judicial panels of inquiry and restitution following serious violations by law enforcement agents during the “EndSARS” protests against the brutality of the Special Anti-Robbery Squad (SARS), but they do not seem to have produced much progress in accountability.<sup>19</sup>

29. Lack of adequate normative frameworks, lack of recognition of certain crimes, and lack of independent oversight bodies to investigate complaints of law enforcement misconduct is a key challenge.

30. The Special Rapporteur has received allegations that in various countries the police have refused to register cases concerning violations by the authorities and the authorities have tried to cover up evidence of the excessive use of force and other crimes committed in the context of protests, in order to protect law enforcement agents and/or other officials from accountability.

31. Furthermore, in many countries there is a lack of understanding by the police and the judicial authorities of certain crimes, such as forced nudity and invasive body searches reported by women activists and protesters during detention. The Special Rapporteur has received information of sexual abuse, such as the stripping of female activists and protesters in detention or at protest sites and rape or gang rape of protesters,<sup>20</sup> which have been used as a tool to assert power, punish, humiliate and discourage women and wider communities from continuing with their activism. Such acts have a seriously traumatizing impact on the survivors, who are reluctant to pursue cases due to social stigma and the lack of support from State institutions and specialized independent bodies. The Special Rapporteur welcomes the setting up of specifically trained, independent and civilian-led units to address reports of sexual and gender-based violence.

32. There seems to be a general lack of capabilities, training and understanding among law enforcement agents, prosecutors and judges as to how to deal with offences against children. Children activists have been arrested, killed, criminalized and punished, including through being expelled from school or prevented from entering higher education, resulting in life-long consequences, while their parents have been arrested or had their parental rights withdrawn for allowing their children to take part in protests. The Special Rapporteur stresses that such practices seriously infringe children’s rights to association and peaceful assembly that are recognized by the Convention on the Rights of the Child. The Special Rapporteur refers to the Committee on the Rights of the Child, which has recommended the creation of “a complaint mechanism for children” who have faced excessive use of force or arbitrary detention during public protests.<sup>21</sup>

33. The main challenge undermining investigations is that they are carried out by police authorities, who in most cases are directly involved in carrying out the crimes under investigation. Many States lack independent oversight mechanisms to investigate abuses carried out by State agents. The secrecy surrounding investigations into police misconduct that is prevalent in some States, the exclusion of victims from participation in the investigation process and the retention of information from civil society all constitute further challenges to investigations.

34. In some countries police, often arbitrarily, have demanded that detained protesters sign statements to the effect that they have not been ill-treated and/or they have been threatened to remain silent about the abuses they have suffered as a condition for their release. As well as concealing evidence of torture, ill-treatment or sexual abuse, this has been made possible by obstructing timely and adequate access to lawyers and medical personnel for detained activists.

35. Some countries have made the use of body cameras compulsory for law enforcement during the facilitation of protests and closed-circuit television (CCTV) cameras have been

<sup>19</sup> See communication NGA 6/2020.

<sup>20</sup> See communication SDN 6/2022.

<sup>21</sup> CRC/ECU/CO/5-6, para. 21 (c).

installed in public squares, police cars and police stations as a positive effort to prevent possible abuse. However, these efforts have been sparse and the problem of the lack of independence of investigations remains, as images from such cameras have not been made available to the victims, their lawyers or to civil society upon request, and recordings made have been contaminated, tampered with or deleted. The exclusive control of law enforcement agents over both footage and cameras has enabled further obstructions of justice.<sup>22</sup> As a good practice, images of body and CCTV cameras should be received, monitored and handled by an independent civilian body to ensure the integrity and credibility of the evidence and made available to civil society, victims and their representatives. That is also important in preventing those tools from being used for unlawful surveillance and intimidation of activists and protesters.

36. Investigation into and accountability for the misuse of less lethal weapons, such as tear gas, rubber bullets and other kinetic impact munitions, leading to serious injuries or death during protests has been challenging. There is a lack of proper reporting procedures and monitoring of the use of such weapons, and reports often lack the basic information needed to reconstruct the facts and establish the possible crimes and responsibilities of perpetrators. Important information should include: time, location, type of munition used, circumstances surrounding the use of force, reason for the use of force, which officers used force, the types of force used and how the decision to use force was made.

## 2. Prosecutions

37. There is a general lack of prosecutions related to cases of serious abuses of activists and protesters. When prosecutions for crimes against activists or protesters have been brought, they have been against low-level perpetrators, while the so called “intellectual authors” of the crimes have rarely been brought to justice. Letting those most responsible go unpunished allows impunity to continue and perpetrators to grow bolder and more violent. A compelling example is that of the killing of human rights defender and city council member, Marielle Franco, and her driver in 2018 in Brazil,<sup>23</sup> where, although the perpetrators have been identified, there has to date been no judgment or sentence and there is still no information on the intellectual authors of the killing.<sup>24</sup> Furthermore, despite the high number of lawsuits filed in some countries against law enforcement agents for large-scale serious abuses in the context of social protests, there has been limited progress in sanctioning those responsible.<sup>25</sup>

38. On the contrary, activists and protesters have faced intensive investigations, have been prosecuted, charged and handed heavy fines and arbitrary or excessive sentences, including death sentences, for alleged sedition or their activism or participation in peaceful protests. For example, in Iraq, following investigations into alleged large-scale crimes in the context of the protests in 2019, only a few State actors have been prosecuted, while many protesters have been charged for alleged protest-related violations.<sup>26</sup> Such sanctions against protesters is a form of collective punishment for exercising the rights of assembly and demonstration<sup>27</sup> and these have an inhibiting effect. The Special Rapporteur has also strongly condemned the sentencing to death and execution of peaceful protesters in the Islamic Republic of Iran.<sup>28</sup>

39. The authorities in many countries have attributed the failure to achieve prosecutions for crimes committed against activists and protesters to lack of evidence and/or the inability to identify the perpetrators, even though the crimes have been established. This is frequently

<sup>22</sup> See communication NGA 6/2020.

<sup>23</sup> See communication BRA 15/2018.

<sup>24</sup> A/HRC/53/38/Add.1.

<sup>25</sup> OHCHR, “Informe de seguimiento del ACNUDH al ‘Informe sobre la misión a Chile del 20 de octubre al 22 de octubre de 2019’” (October 2021), available at [https://acnudh.org/wp-content/uploads/2021/10/Informe-de-seguimiento-Chile\\_SUPERFINAL.pdf](https://acnudh.org/wp-content/uploads/2021/10/Informe-de-seguimiento-Chile_SUPERFINAL.pdf) (in Spanish only).

<sup>26</sup> See communication IRQ 5/2021 and OHCHR and United Nations Assistance Mission for Iraq (UNAMI), “Update on accountability in Iraq” (June 2022).

<sup>27</sup> See A/77/171.

<sup>28</sup> OHCHR, “Iran: Stop sentencing peaceful protesters to death, say UN experts”, 11 November 2022.

due to the failure to provide prompt, impartial, thorough and effective investigations, and to comply with international standards for investigations, as mentioned above.

40. In addition, State prosecutors responsible for opening cases have been reluctant or have refused to pursue cases against State agents and have either dismissed a case on the grounds that no crime has taken place or failed to gather sufficient evidence. Trials are also often marred by accepting evidence obtained through torture, resulting in incriminating the victims in fabricated crimes and exempting State agents from alleged violations. Trials are not transparent, at times being fully closed to the public and victims' families, and evidence that may be used against law enforcement agents or commanders has been withheld under the pretext of national security. Victims have often been excluded from investigation processes and evidence has not been shared with them. That undermines the scrutiny of the trials. Hence, trials against State officials are often perceived as a formality, without any real aim to clarify the facts and establish the truth. Furthermore, administrative accountability processes, including internal police investigations, when available, have not been transparent or independent and have been used to prolong or avoid judicial proceedings, stalling prosecutions.

41. As a first step towards strengthening prosecutions, it is important to bring national legislation into line with international human rights law and standards, including international crimes. For example, with respect to ensuring adequate prosecutions and punishments for crimes related to the use of illegal, unnecessary or excessive use of force, including through less lethal weapons in the context of protests, which could constitute torture, it is vital that national laws recognize and criminalize extra-custodial use of force as torture and other cruel, inhuman or degrading treatment or punishment.<sup>29</sup> Enforced disappearance should also be criminalized, as well as the different forms of sexual violence. That would ensure sentencing of perpetrators that is proportionate to the aggravated nature of the crimes.

42. It is important that investigations and prosecutions related to serious crimes in the context of freedom of peaceful assembly and of association not only focus on individual cases but also identify patterns of violations, considering social, political, historical and other relevant factors and the wider context. That will help to identify the State policy of managing protests, identify gaps and areas for improvement and non-repetition, and identify the responsibility and omissions of superior officials, including identifying any possible discriminatory bias in the use of force based on racial, ethnic, gender or other grounds. Investigations should also "unmask any racist motive and establish whether or not ethnic hatred or prejudice may have played a role in the events".<sup>30</sup> A good practice will be setting up independent, well-resourced specialized prosecutorial units, responsible for prosecuting violations of the rights of civil society and protesters, trained in human rights, including in dealing with sexual and gender-based violence and offences against children. A national strategy for prosecuting such cases is required, especially when such crimes have been widespread or systematic to ensure that such prosecutors have the capacity to cover the volume of crimes for affected communities.

43. The lack of tangible accountability and prosecutions have a revictimization effect, affecting the overall health of victims, their families and communities, and contributing to a feeling of anguish and despair.

### 3. Command responsibility

44. To end the cycle of crimes and impunity for serious abuses of activists and protesters, the Special Rapporteur has emphasized that prosecuting those most responsible, irrespective of their status or level of authority, is crucial. He recalls that under the principle of command responsibility, civilian and military superiors, including political leaders, can be held criminally liable for crimes amounting to international crimes committed by their subordinates, including for failing to prevent the commission of such crimes or prosecute

<sup>29</sup> See [A/72/178](#) and [CAT/C/37/D/262/2005](#).

<sup>30</sup> See European Court of Human Rights, *Nachova and Others v. Bulgaria*, Application Nos. 43577/98 and 43579/98, Judgment, 6 July 2005, para. 160.

their subordinates for them. That is provided for in the Rome Statute of the International Criminal Court but is also part of customary international law.

45. In the context of committing or allowing serious abuses to take place during protests, law enforcement commanders should be held criminally liable not only for the orders they have given, but also for failing to prevent, suppress or report serious abuses, including the unlawful use of force or firearms, when they knew or should have known that crimes would be or had been committed by their subordinates. Further, commanders should be responsible for decisions to deploy certain units for policing protests, including when deciding to deploy the army or other bodies/units that have not been trained in human rights and public order, as this increases the probability that serious human rights violations will be committed.

46. To this day, those in positions of authority have rarely been prosecuted, even in situations where there have been widespread and repeated serious crimes in the context of mass protests. Many of the same officials who have been implicated in allowing serious crimes against protesters to be committed are still in their posts and in charge of managing protests, allowing for such crimes to be repeated.

47. In the rare examples where States have taken steps to bring to account law enforcement commanders responsible for serious violations in the context of protests, these have been highly politicized and charges and sentences, if any, have been inadequate. A good practice would be that prosecuting authorities investigate the responsibility of the entire chain of command involved and identify each individual's responsibility, from the planning stages, through the protest itself and the phases after the protest. Serious violations in the context of protests are often possible because commanders and other superiors either ordered or failed to prevent them, omitting to take all the necessary precautions in the planning, preparation and conduct of law enforcement operations,<sup>31</sup> through decisions on the use of certain weapons and ammunitions and by failing in terms of reporting and disciplinary punishments. The Special Rapporteur recalls that the Special Rapporteur on extrajudicial, summary or arbitrary executions found that failure to incorporate knowledge of past law enforcement mistakes into the planning, preparation and concrete policing of assemblies, leading to "repeating the mistakes of the past with deadly consequences", would constitute a failure in command responsibility.<sup>32</sup>

48. The prosecution of commanders relies heavily on testimonies provided by their subordinates and the dismissal of the testimonies of victims and witnesses, which adds to the challenge of prosecuting them. In some cases, when commanders have been taken to court, they have refused to provide evidence or denied their crimes. To adequately prosecute commanders would also require them to be removed from their position of authority from where they can influence or obstruct the proceedings and pose a threat to victims.

49. The process of identifying the commanders responsible is especially difficult when different entities including the police, the army and other security forces are involved in policing protests and allowing crimes against activists to be committed.

50. To improve the accountability of commanders and identify individual criminal responsibility in the context of protests requires the provision of clear and publicly available protocols for law enforcement, clarity of command-and-control structures during protests, as well as of the equipment used, and a robust reporting system. Such information is also important to evaluate the actions, omissions and legitimacy of the use of force.

51. Serious violations by State actors of the rights of activists and protesters are often not isolated incidents but happen within a political context. Accountability mechanisms should also examine the context and the role and responsibilities of public officials. Hostile public rhetoric, stigmatizing and hate speech can instigate, incite or facilitate the abuse and repression of activists and protesters. Populist rhetoric by public officials that promotes discrimination and encourages violence against certain groups and communities can also facilitate serious crimes against protesters and activists. Authorities and public officials in certain States have also exploited conservative social contexts by allegedly vilifying women

<sup>31</sup> See, for example, [A/72/178](#).

<sup>32</sup> [A/HRC/26/36](#), para. 53.

activists through sharing their pictures online, knowing that this could result in threats against and intimidation of them, including from their families and communities. Furthermore, public officials condoning the use of force and praising law enforcement agents and commanders for repressing protests, as has been seen in some countries, contributes to undermining or preventing accountability.

52. In that respect, as a positive development, the Special Rapporteur welcomes the trial in Guinea, which started in 2022, to prosecute those most responsible for the stadium massacre, including the former military ruler and 10 other officials, all of whom are charged with having responsibility for the soldiers who allegedly carried out the crimes during the opposition rally protesting against military rule. It should be noted, however, that the victims have waited 13 years for justice.<sup>33</sup>

## VI. Transitional justice mechanisms

53. The Special Rapporteur welcomes the setting up of transitional justice mechanisms as providing a comprehensive framework to address serious mass human rights violations committed in the context of protests and stresses that such mechanisms should be inclusive of all sectors in society and designed and implemented in collaboration with victims' groups and civil society. They must address the root causes of repression, including examining how previous restrictions on the rights to peaceful assembly and association contributed to the commission of crimes and abuses, all of which is important in order to develop laws and institutional reforms guaranteeing non-repetition.

54. One historic example has been the Truth and Dignity Commission in Tunisia that was set up to investigate serious past human rights violations, including the excessive use of force against and killing of peaceful protesters during the 2010–2011 uprising. The Commission offered a historic opportunity for justice in Tunisia and was a promising example for the region. An important element was that the Commission had the power to refer cases directly to the courts. However, there seems to have been little progress in bringing the most responsible perpetrators to justice, which has affected the democratic transition of the country. The Special Rapporteur has raised concerns over the prolonged state of emergency which has affected civic freedoms.<sup>34</sup>

55. The Special Rapporteur stresses the importance of such transitional mechanisms in delivering timely accountability for victims, related to the suppression of popular protests, as often they have taken too long to produce any outcome for accountability and victims have lost trust in them. Such mechanisms should not be used to avoid judicial processes or approve unlawful blanket amnesties for serious human rights violations of the rights of protesters and activists.

## VII. Reparations

56. In addition to judicial prosecutions and administrative sanctions of perpetrators, full reparations should be provided to repair the harm to the victims and ensure non-repetition. These should include compensation, restitution, rehabilitation, satisfaction, including restoring the dignity and rights of victims, a public apology establishing the truth and institutional reforms and changes to relevant laws and practices.<sup>35</sup>

57. Hundreds of thousands of activists and individuals exercising their rights to freedom of peaceful assembly and of association have been injured or killed around the world as a result of torture and ill-treatment, sexual abuse and excessive use of force by law enforcement agents. Hundreds have lost eyes, eyesight, limbs or suffered severe disabilities as a result of the unlawful use of force, including the misuse or deliberate abuse of less lethal weapons in

<sup>33</sup> See <https://news.un.org/en/story/2022/09/1128241#>.

<sup>34</sup> [A/HRC/50/23/Add.3](#), para. 14.

<sup>35</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, paras. 16 and 19–22.

the context of protests. There have been examples of States setting up programmes for reparations for victims in the context of protests, where the massive harm inflicted by State forces on protesters was met with public outcry by victims and civil society; however, these programmes have been limited in scope and the compensation provided has been inadequate in relation to the harm caused. The process for accessing compensation has been cumbersome, bureaucratic and unclear. Support for victims of sexual abuse has rarely been provided. Survivors suffer long-term psychological trauma and require psychological support; in some cases, victims have committed suicide. Often the burden is on victims' support groups and civil society to provide such services, as States have failed to establish adequate rehabilitation programmes.

58. The Special Rapporteur notes the efforts by Iraq to provide financial compensation as a form of redress for families whose relatives were killed in connection with the protests in 2019 and that reparations should also extend to adequately assist thousands of injured protesters.<sup>36</sup> The Special Rapporteur also welcomes the ruling of the Supreme Federal Court in Brazil in June 2021 confirming the State's duty to compensate media professionals injured by police officers during news coverage of demonstrations.<sup>37</sup> These positive steps, however, have been established against a backdrop of inadequate judicial accountability for the killings and other serious abuses related to the protests, or used as a substitute for judicial accountability. In the Plurinational State of Bolivia, it is concerning that a decree providing for monetary compensation and health-care services for the families of those who were killed and injured during sociopolitical protests, states that in return for compensation, victims' families "shall be deemed to have had their grievances redressed before any international body".<sup>38</sup> Another challenge that prevents activists and protesters from accessing monetary compensation is the requirement by some States of identification of the perpetrator, although the crime has been judicially recognized. To avoid such inadequacies, especially in cases of massive violations in the context of protests it would be important to set up programmes providing collective reparations. However, monetary compensation cannot be used to avoid criminal liability and used in lieu of judicial prosecutions and it must not be used to prevent victims from seeking accountability before national or international institutions.

59. Public recognition of abuses, including a public apology by the authorities, and recognition of the legitimate actions of activists are vital for restoring the dignity and rights of the activists affected, and civil society as a whole. It is important to have an official declaration or a judicial decision restoring the dignity, reputation and rights of the victims and of persons closely connected with them. Activists have commended the importance of the courts, including regional courts, in recognizing the rights of victims in their judgments, while removing the stigmatization and criminalization by States depicting them as "terrorists" or "criminals" for exercising their rights to freedom of peaceful assembly and of association. The Special Rapporteur notes that in some cases the authorities have publicly apologized for abuses of protesters; however these have been undermined due to the lack of acceptance of responsibility and judicial follow-up.

60. Survivors of State repression in the context of protests have highlighted the importance of "restoring and preserving the memory of the protest", including its objectives, and countering narratives aimed at delegitimising, criminalizing and stigmatizing protests. Preserving the memory will also prevent repetition of the crimes and will contribute to accountability. For example, the memory of why people protested and the restoration of the truth has a deep meaning for social movements and activists, as it also preserves and advances the objective of protests for reform and human rights.

## VIII. Guarantee of non-recurrence

61. Institutional and policy reforms are vital for the protection of the rights to freedom of peaceful assembly and of association in general, and to guaranteeing non-recurrence where

<sup>36</sup> OHCHR and UNAMI, "Update on accountability in Iraq".

<sup>37</sup> [A/HRC/53/38/Add.1](#).

<sup>38</sup> See [https://www.oas.org/en/iachr/media\\_center/preleases/2019/321.asp](https://www.oas.org/en/iachr/media_center/preleases/2019/321.asp). See also supreme decree No. 4100 of 5 December 2019 of the Bolivian Congress (in Spanish only).

there has been a pattern or practice of violations in the past. Reform measures should be oriented towards full recognition of the rights to association and peaceful assembly, to be enjoyed freely by individuals and not subject to undue State control. Where the security forces have been involved in the excessive use of force and other violations, reform of the security sector and police are essential.

62. The Special Rapporteur welcomes the measures undertaken by some States to develop laws and protocols for law enforcement in order to prevent repetition of serious violations due to excessive use of force in the context of protests. However, these should be accompanied by comprehensive police reform, which in many cases is missing. That reform should include enhancing civilian oversight, control and accountability, including reforming policing that has been militarized and may be undemocratic and authoritarian.<sup>39</sup> Further, enhancing police accountability requires the establishment, restoration or enhancement of public trust and rebuilding of its legitimacy; civilian scrutiny is key for establishing a democratic police force, which is responsive to the needs of the public and accountable to them. The police reform in Kenya, following the National Accord and Reconciliation Act of 2008, addressing the 2007 post-election violence has been cited as a positive example. The Kenya police reform aimed to make law enforcement more inclusive and citizen-participatory, while creating a civilian oversight body. Importantly, these reforms were undertaken in collaboration with various stakeholders, including the public and civil society. However, due to the lack of accountability for the crimes committed during the 2007 elections, those efforts have been undermined and fear of repetition has persisted, creating a chilling effect on Kenyans wishing to exercise their rights to freedom of peaceful assembly and of association. Women in particular refrained from full participation in the 2022 elections out of fear of a repetition of sexual and gender-based violence.<sup>40</sup>

63. Further measures to improve the institutional accountability of the police include the development of a clear and unambiguous line of command to ensure that lawful orders are complied with; an effective reporting system that enables management and other oversight bodies; and mandatory reporting of any use of firearms, in addition to the use of other police powers.<sup>41</sup> In a case concerning women victims of sexual torture by law enforcement agents during detention in relation to their participation in protests in Mexico, the Inter-American Court of Human Rights provided that as part of the reparations Mexico should establish a training programme for police and set up a supervision and monitoring mechanism to measure and evaluate the effectiveness of existing policies and institutions with regard to accountability and the monitoring of the use of force.<sup>42</sup>

64. In many countries, law enforcement institutions emerging from, or carrying the legacy of, authoritarian regimes need thorough reform. If not reformed and brought under civilian command, the violations persist, as seen during the violent repression of protests in many countries. The Sudan is a bleak example of how the consistent failure to implement accountability for past and recent crimes in the context of protests and respond to the demands of protesters for a civilian-led transitional government has contributed to a serious deterioration of the situation, resulting in the violent conflict that broke out in the country in April 2023.<sup>43</sup>

## **IX. Need to ensure victim-centred accountability and the role of civil society**

65. Rights-compliant remedial policies require the active participation of victims and their relatives. It is therefore important that victims, their relatives and representatives, including

<sup>39</sup> See *Handbook on Police Accountability, Oversight and Integrity* (United Nations publication, July 2011).

<sup>40</sup> See <https://www.ohchr.org/en/press-releases/2022/07/kenya-civic-space-and-respect-fundamental-freedoms-key-peaceful-elections-un>.

<sup>41</sup> See *Handbook on Police Accountability, Oversight and Integrity*.

<sup>42</sup> *Case of Women victims of sexual torture in Atenco vs. Mexico*, Judgment, 28 November 2018.

<sup>43</sup> See <https://www.ohchr.org/en/press-releases/2022/06/sudan-un-experts-urge-authorities-ensure-immediate-accountability-past-and>.

civil society, have regular and unrestricted access to investigations and related proceedings. However, victims of State and political violence and those belonging to marginalized communities that are discriminated against have often been retraumatized through the process, which has made many victims reluctant to report State violence, such as in the context of protests, or withdraw their cases. Further, victims or their lawyers face reprisals and abuse when pursuing accountability against powerful perpetrators or State agents. Activists who are survivors of sexual and gender-based violence also face additional and even increased discrimination and exclusion from the justice system and their communities when pursuing justice. In many cases, pursuing accountability has been left to the victims themselves, resulting in additional social, economic and cultural obstacles for victims from marginalized communities and for children.

66. Affected activists and protesters can also be subjected to further persecution or criminal charges for reporting on, or pursuing accountability for, crimes committed by State agents. In 2020 in Zimbabwe, three female political youth leaders were arrested and charged with falsifying accusations of their abduction, torture and sexual abuse, allegedly by State security agents.<sup>44</sup> Victims of excessive force and police repression during some protests have reported being revictimized and stigmatized as “criminals” when seeking medical assistance for the injuries inflicted by law enforcement agents. Activists have reported discriminatory medical treatment of injured protesters, which has dissuaded protesters in such contexts from seeking medical assistance, negatively impacting also the preservation of evidence of the crimes.

67. States should recognize the important role of victims in ensuring accountability and ending impunity. Victims should also be closely involved and consulted on the design and operations of accountability mechanisms, including the setting up of investigative mechanisms and reparation programmes that meet their differentiated needs.

68. Civil society efforts have been instrumental in achieving accountability for activists and protesters, as they have documented violations, filed cases in national and regional courts and pursued international justice. For this work, civil society has also faced abuse in reprisals. States have used broad anti-terrorism laws to frame civil society working on accountability and supporting victims as “terrorists”. For example, the case of the designation by Israel of prominent Palestinian organizations as terrorists for their accountability work and for supporting detained activists, among others, which led to the obstruction of access to resources for those organizations and to the closure of some of them.<sup>45</sup> In addition, the Russian authorities have liquidated the main human rights organizations in an escalated crackdown on civil society and anti-war protesters, while the implementation of the Foreign Agent Law has contributed to the self-censorship of the remaining civil society organizations in the country.<sup>46</sup> These repressive measures have severely obstructed civil society documentation and reporting on serious human rights violations, and the provision of legal aid and support to victims.

69. States should cease acts of reprisal against activists promoting accountability. The rights of civil society, victims and victims’ groups to freedom of peaceful assembly and of association should be fully facilitated, respected and protected, as these rights provide an avenue for victims to participate in accountability processes and policy development to address the abuse, repair the harm and guarantee non-repetition.

70. National human rights institutions play an important role in advancing accountability when they are well-resourced and independent. They can review and harmonize national legislation so that it is in line with the international human rights law and standards relevant to the rights to freedom of peaceful assembly and of association; document and investigate serious abuses as they occur; and support victims in obtaining justice and institutional reform to guarantee non-repetition of abuses. Further they can support transitional processes

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<sup>44</sup> See communication ZWE 1/2020.

<sup>45</sup> See <https://www.ohchr.org/en/press-releases/2022/04/israelpalestine-un-experts-call-governments-resume-funding-six-palestinian#>.

<sup>46</sup> See communication RUS 13/2021.

following large-scale violations of rights in the context of protests by bringing victims, communities and other stakeholders together.

## X. Role of the international community

71. Although States have the primary responsibility to ensure accountability, the international community, including the United Nations and regional organizations, should consistently support States in their attainment of that end. The graver the violation, the more important accountability becomes and hence it is particularly incumbent on the international community to respond to serious human rights violations committed in relation to the exercise of the rights to freedom of peaceful assembly and of association, in order to ensure prevention and deter further and greater violations.

72. Regional and subregional courts play a key role in supporting national-level accountability processes. Important approaches by some regional courts have been shifting the burden and standard of proof for human rights violations, given that States often have far greater access to information than victims; such approaches should be fully adopted to improve access to justice for activists and protesters.<sup>47</sup> On several occasions, international bodies have adopted a strong approach, calling on States to adopt a range of remedies, and have successfully prompted some national-level institutional and legal reforms aimed at preventing repetition of abuses and providing reparations to victims. The Special Rapporteur is concerned with the limited implementation of judgments requiring investigations and thorough structural reforms, noting again, however, the lack of political will by States in this area. One example of this, among many others, is the case of *Atenco v. Mexico*, in which the wide-ranging, systematic and thorough investigations required to determine, prosecute and punish the perpetrators, ordered by the Inter-American Court of Human Rights, has been pending since 2019.<sup>48</sup> Recognizing the important role of regional mechanisms, including in promoting accountability and combating impunity for human rights violations and abuses of those exercising their fundamental freedoms, the Special Rapporteur, together with other special rapporteurs and some regional mechanisms, has issued a framework for joint action to strengthen cooperation between international and regional human rights mechanisms for the realization of the rights to freedom of peaceful assembly and of association.<sup>49</sup>

73. The international community and the United Nations system, including the Human Rights Council, also have an important role in advancing accountability related to serious violations of the rights of activists and protesters. Since the establishment of the Special Rapporteur's mandate in 2010, the Human Rights Council has set up various mechanisms aimed at responding to widespread serious human rights violations, including violations linked to the suppression of popular protests, with a view to preventing further deterioration in the human rights situation and ensuring accountability. Those mechanisms include the mandate relating to the examination of the human rights situation in Belarus and commissions of inquiry and independent international fact-finding missions focused on Burundi, the Islamic Republic of Iran, Libya, Nicaragua, the Syrian Arab Republic, the Bolivarian Republic of Venezuela and the Occupied Palestinian Territory, among others.<sup>50</sup> Those mechanisms have been critical for collecting and preserving evidence and establishing the facts and circumstances surrounding alleged human rights violations and crime, and where possible identifying perpetrators. However, they have not been able to advance criminal prosecutions at the international or national level and the Special Rapporteur therefore encourages the Human Rights Council to move those mechanisms from evidence-gathering to action, to enable them to bring cases to national, regional and/or international courts or tribunals at the request of such bodies or on their own initiative (similar to the mandate of the International Impartial and Independent Mechanism to Assist in the Investigation and

<sup>47</sup> Christopher Roberts, "*Machalikashvili and others v. Georgia*: the critical importance of the burden and standard of proof to human rights adjudication", Strasbourg Observers Blog, 17 March 2023.

<sup>48</sup> See [https://www.corteidh.or.cr/supervision\\_de\\_cumplimiento.cfm?lang=en](https://www.corteidh.or.cr/supervision_de_cumplimiento.cfm?lang=en) (in Spanish only).

<sup>49</sup> See <https://freeassemblyandassociation.net/wp-content/uploads/2023/03/Joint-Action-for-FoAA-Framework.pdf>.

<sup>50</sup> See <https://www.ohchr.org/en/hr-bodies/hrc/list-hrc-mandat>.

Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011<sup>51</sup>).

74. The Special Rapporteur also emphasizes that to best promote non-repetition, such international independent commissions of inquiry should be mandated to also investigate the underlying root causes of the repression of protests and civil activism, as both protests themselves and the tendency to suppress them are inevitably connected to widespread, historically rooted inequalities and legacies of injustice within societies, including entrenched discrimination against marginalized groups.<sup>52</sup> It is essential that the valuable work of such investigatory mechanisms always be followed by systematic and proactive follow-up, aimed at ensuring tangible accountability in practice and that proactive measures are taken. In that context, the Human Rights Council and its supporting mechanisms play a key role in providing early warnings of situations that may lead to mass atrocities.

75. The International Criminal Court has taken some steps to investigate and prosecute serious crimes committed against protesters (these include Libya, the Bolivarian Republic of Venezuela and the Occupied Palestinian Territory<sup>53</sup>), but progress on this front has been limited and slow; processes have been stalled due to lack of cooperation by the States concerned and the failure to arrest and extradite alleged perpetrators subject to arrest warrants. Unfortunately, some States have exercised political pressure on the Court, obstructing its ability to provide justice to victims.

76. Specialized judicial bodies, including special courts and hybrid tribunals,<sup>54</sup> may be a useful supplementary tool to advance judicial prosecutions of serious crimes, while building the capacity of local courts. Recent examples, however still far from producing any results, include the envisaged hybrid court for South Sudan, yet to be established by the African Union Commission, and the Special Criminal Court of the Central African Republic, which is composed of national and international judges.<sup>55</sup> Such courts, when sufficiently resourced and supported by the international community, can help bridge the gap between international and national justice efforts, contributing to localized delivery of justice closer to victims.

77. Universal jurisdiction, under which States may prosecute the authors of serious international crimes, despite the accused not being a national or the events in question having taken place under the jurisdiction of the State concerned, has often proven an effective and quick measure of penalizing, and thereby dissuading, the commission of the most serious international crimes. If employed effectively, it may also help to strengthen the minimal measures taken to date to advance accountability for those responsible for committing serious crimes in the context of the exercise of the rights to freedom of peaceful assembly and of association. Sending the message that perpetrators of serious crimes related to peaceful assembly and association can be arrested and tried anywhere and at any time can be a strong deterrent for potential or current perpetrators. The Special Rapporteur notes the challenges shared by some States for prosecuting perpetrators of serious crimes committed against activists or protesters occurring on the territory of another State, due to lack of cooperation,<sup>56</sup> and welcomes recommendations by States to strengthen extradition laws to advance prosecutions of such crimes under universal jurisdiction.<sup>57</sup>

78. Effective accountability efforts are only possible with the incorporation and support of a strong civil society. Civil society and victims' groups should be included as partners in

<sup>51</sup> See [A/71/755](#).

<sup>52</sup> See, for example, Human Rights Council resolution S-30/1.

<sup>53</sup> See International Criminal Court, *The Prosecutor v. Saif Al-Islam Gaddafi*, No. ICC-01/11-01/11-344-Red, 31 May 2013; International Criminal Court, *Situation in the Bolivarian Republic of Venezuela I*, No. ICC-02/18, 1 November 2022; and <https://www.ohchr.org/sites/default/files/documents/countries/palestine/2023-03-23-Letter-ICC-Palestine.pdf>.

<sup>54</sup> See OHCHR, *Rule-Of-Law Tools for Post-conflict States: Maximizing the Legacy of Hybrid Courts* (United Nations publication, 2008).

<sup>55</sup> See <https://news.un.org/en/story/2021/02/1083492> and <https://peacekeeping.un.org/en/car-special-criminal-court-scc-now-fully-operational>.

<sup>56</sup> Submission by Lithuania.

<sup>57</sup> Submission by Austria.

the establishment, development and implementation of accountability policies and mechanisms. They should also be supported with platforms and flexible and sustained funding. Only through a partnership between civil society, States and regional and international bodies will the cycle of impunity end.

## **XI. Conclusions**

79. **Ensuring accountability for violations related to the exercise of the rights to freedom of peaceful assembly and of association is an integral part of the responsibility of States to respect, protect and enable those rights. The Special Rapporteur is calling for States and the international community to put promises and commitments into action to end the endemic and widespread impunity for serious violations of the rights of those exercising these fundamental freedoms.**

80. **The Special Rapporteur emphasizes that for the effective enjoyment of the rights to freedom of peaceful assembly and of association and to ensure full accountability, States should halt their negative narratives, criminalizing and stigmatizing activists and protesters. Protecting those rights through robust and timely accountability is vital for preserving the ever-shrinking civic space as a whole, countering expanding authoritarianism and preventing deterioration of peace and security. Accountability has a deterrent effect, is crucial for ending the cycle of violence and preventing atrocities against activists and protesters and is vital for sustainable transition and peacebuilding.**

81. **The international community has a vital role to play in advancing accountability and the Special Rapporteur stresses the need for collaboration at the regional and international levels to strengthen mechanisms to bring justice to civil society and protesters when they face serious violations, but also to act in a timely and pre-emptive manner. Victims, survivors, their representatives and civil society should be an integral part of national and international accountability processes, while States should respect and protect their rights to freedom of peaceful assembly and of association to enable their meaningful participation in the accountability processes.**

## **XII. Recommendations**

82. **The Special Rapporteur recommends that States:**

(a) **Immediately cease all use of excessive and unlawful force, enforced disappearances, torture and other forms of cruel, inhuman or degrading treatment or punishment, including sexual and gender-based violence against and arbitrary detention of those exercising their rights to freedom of peaceful assembly and of association;**

(b) **Immediately cease generating harmful, hostile narratives or encouraging and condoning violence against rights activists and protesters. State authorities, from the highest level down, must strongly and in a timely manner condemn all violations of the rights to freedom of peaceful assembly and of association;**

(c) **Ensure that all national legislation, including national security and public order measures, is fully in line with international human rights law and standards and does not provide for immunity for the use of force;**

(d) **Ensure that national law fully incorporates and criminalizes international crimes, excessive use of force, torture and other forms of cruel, inhuman or degrading treatment or punishment, including when extraterritorial, and all forms of sexual violence, as well as enforced disappearances, and recognizes command responsibility;**

(e) **Refrain from the use of undercover security personnel or militarized units to carry out law enforcement tasks during protests and with respect to activists;**

(f) **Ensure that all law enforcement officers are clearly identifiable, with their name and/or identification number clearly displayed on their uniform at all times;**

(g) **Develop, in coordination with civil society, unified national protocols for law enforcement officials on the facilitation of peaceful protest, in compliance with international standards and best practices, including by prioritizing de-escalation and negotiation strategies aimed at facilitating peaceful protests and minimizing the use of force;**

(h) **Develop clear, unambiguous and transparent lines of command and implement proper record-keeping related to the decisions and orders made by commanding officers at all levels. Register the equipment provided to individual officers, including vehicles, less lethal weapons, firearms and ammunition, and ensure that all uses of firearms and less lethal weapons are recorded, as well as the identity of the persons carrying out particular activities, and make those records available to the oversight authorities and the public, in compliance with international standards on access to information;**

(i) **Ensure unobstructed monitoring during protests, including by respecting and protecting the role of monitors and journalists, and refraining from Internet or mobile phone cuts prior to, during or after protests;**

(j) **Ensure a victim-centred approach to the design, development and implementation of all accountability mechanisms, including during investigations and prosecutions, as well as all reparation programmes, including by:**

(i) **Consulting widely with alleged victims and their representatives;**

(ii) **Ensuring the differentiated needs of different victim groups are met;**

#### **Investigations and prosecutions**

(k) **Initiate prompt, independent and effective investigations whenever serious allegations of serious human rights violations of the rights of activists and in the context of assemblies are reported, in accordance with the necessary standards, including the Istanbul Protocol and the Minnesota Protocol;**

(l) **Set up independent civilian oversight bodies, trained in human rights investigations, including in the context of protests, with a mandate to investigate law enforcement officers. Ensure that those bodies apply an appropriate standard and burden of proof;**

(m) **Ensure that investigations examine decisions, orders and omissions, whether of an individual or structural nature, up the entire chain of command;**

(n) **Ensure that unedited body camera and CCTV camera footage is received, monitored and maintained by an independent civilian body and made available to members of the public in accordance with international standards on access to information;**

(o) **Ensure that investigatory mechanisms are promptly established, with a mandate not only to focus on individual cases but also to identify patterns and practices of violations and the wider context in which they take place, as well as the root causes, considering social, political, historical and other relevant factors. Ensure that the findings of these and other investigations are made available to the public;**

(p) **Ensure public access to effective, independent and impartial judicial, civil and administrative accountability processes;**

(q) **Ensure that officials and commanding officers are held accountable, irrespective of their status and authority, for crimes committed by their subordinates amounting to international crimes. Bring to account commanding officers for failing to exercise effective command and control, when they knew, or should have known, that law enforcement officials under their command had resorted to the unlawful use of force, and if they did not take all measures in their power to prevent, suppress or report such use, or if violations were the result of inadequate planning;**

(r) **Set up independent and specialized prosecutorial units, trained in human rights and adequately resourced, responsible for prosecuting serious violations of the rights of activists and in the context of protests. Design and implement a well-resourced national strategy for prosecuting such cases, especially when these crimes have been widespread or systematic;**

(s) **Establish, if it has not yet been done, specialized, trained and adequately resourced offices and units to address cases involving offences against children and specialized units to address sexual and gender-based violence, including in the context of protests;**

(t) **Ensure that law enforcement agents, lawyers, the judiciary and other court personnel receive training and guidance in dealing with cases of sexual and gender-based violence, and in cases where children are victims/survivors of serious abuse in the context of exercising the rights to freedom of peaceful assembly and association;**

(u) **Provide children whose rights have potentially been violated in connection with their activism with timely and child-friendly access to effective remedies adapted to their needs, including through judicial remedies;**

#### **Reparations and guarantees of non-repetition**

(v) **Ensure that appropriate legal, institutional and policy measures are adopted, including security sector reforms, with the aim of ensuring that there is no repetition of violations;**

(w) **Implement both individual and communal reparation measures and programmes that meet the differentiated and specific needs of every victim group. Such programmes should include restitution, compensation, rehabilitation and satisfaction for all affected victims or their families, according to their needs and relative to the harm inflicted and should be set up in consultation with victims, ensuring that they are gender-sensitive and considerate of additional vulnerabilities related to the race, ethnic, religious or indigenous background, social or migration status, sexuality, age or disability of the victims.**

83. **The Special Rapporteur recommends that donors support victims and victims' groups by providing sustained funding, including support to coalition-building, strategic litigation and psychosocial support for the survivors of serious crimes related to freedom of peaceful assembly and of association.**

84. **The Special Rapporteur recommends that the international community:**

(a) **Impose individual sanctions, such as travel bans and asset freezes, on perpetrators responsible for the commission of serious crimes against activists and in the context of protests;**

(b) **Comply with their international obligations to arrest and try or extradite persons alleged to have ordered or committed international crimes related to assembly and association;**

(c) **Support and effectively collaborate with regional and international justice mechanisms to promptly respond to serious abuses committed against activists and in the context of assemblies under their jurisdiction and in line with the complementarity principle. Effectively implement all relevant judgments adequately and in a timely manner;**

(d) **Where widespread serious human rights violations are taking place related to association and/or protests, support through the United Nations mechanisms and/or regional bodies, the prompt establishment of:**

(i) **Independent international commissions of inquiry, mandated to document and investigate the crimes and their root causes and prepare and**

submit cases on alleged perpetrators to national and international justice mechanisms, including the International Criminal Court;

(ii) Specialized tribunals, as and where necessary;

(e) Implement the principle of universal jurisdiction to prosecute perpetrators of serious crimes carried out against activists and in the context of protests;

(f) Develop a global framework regulating the use of digital surveillance, in accordance with international human rights standards.

85. The Special Rapporteur recommends that companies:

(a) Refrain from supporting or facilitating harmful, hostile narratives that promote and condone violations of the rights of those exercising their rights to freedom of peaceful assembly and of association;

(b) To prevent repetition of serious abuses, refrain from commerce involving the transmission of military equipment, weapons, munitions, digital surveillance tools and other materials and information to States where such materials have been used in the context of violations of the human rights of activists or protesters;

(c) Support investigations and prosecutions of gross human rights abuses committed against activists and in the context of assemblies, which the business has allegedly caused or to which it has contributed.

86. The Special Rapporteur recommends that the media:

(a) Refrain from publishing reports that stigmatize activists and protesters;

(b) Ensure reporters are aware of and reflect human rights standards and obligations in their reporting, including through:

(i) Avoiding derogatory terms;

(ii) Ensuring that the principle of individual responsibility is fully reflected in reporting, in particular by not attributing the violence of isolated individuals to others;

(iii) Ensuring that violence by law enforcement agents is clearly reported;

(iv) Ensuring that the voices and perspectives of activists and protesters are always included;

(v) Reporting on the findings of national and international human rights mechanisms.

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