

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association;
the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur for
freedom of expression of the Inter-American Commission on Human Rights**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, pursuant to Human Rights Council resolutions 32/32, 34/5, artículo 41 de la Convención Americana sobre Derechos Humanos / Article 41 of the American Convention on Human Rights.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning decree n. 64.074/2019 which regulates law n. 15.556/2014, issued by the State Government of São Paulo on 18 January 2019, and published on 19 January 2019, which contains a number of provisions restricting the right to freedom of peaceful assembly.

On 18 January 2019, following protests on 10 and 16 January 2019, the State Government of São Paulo issued decree n. 64.074/2019 (hereinafter referred to as "the Decree"), published on 19 January 2019, which regulates law n. 15.556/2014, and which put in place a number of new requirements for the organisation and regulation of protests involving 300 or more persons.

Article 2 of the Decree states that, in instances where the participation of 300 or more people is foreseen, prior notification must be given to military and civil police, either in electronic form, or by registration at the police station, at least five days in advance of the event, preferably by means of a standard form which is to be established by the Secretariat of Public Security. Furthermore, said form must include information on the following:

1. The nature of the event, along with the estimated number of participants and the time.
2. The use of equipment which may require the closure of roads, change of directions of lanes, changes to public transport or which may require public guidance.
3. If public displacement is foreseen, along with the intended itinerary, which must be defined jointly with the Commander of the Territorial Battalion of the Military Police of the area where the event will take place.

4. The organiser's knowledge of the prohibition of anonymity, including the prohibition of wearing masks or anything else which may conceal the face of the person or which hinders identification of the person during the event.
5. The organiser's knowledge of the constitutional prohibition of carrying weapons at public demonstrations and meetings, including firearms, white weapons, sharp objects, clubs, sticks, stones, explosive devices and other instruments that could injure people and damage public or private property.

Article 5, para. 1º, of the Decree states that the refusal to remove masks or facial coverings as described in Article 2 may characterise the offence of disobedience under Article 330 of the Penal Code.

We wish to express our concern that a number of the provisions of the Decree may violate the right to freedom of peaceful assembly as guaranteed by article 21 of the International Covenant on Civil and Political Rights, acceded to by Brazil on 24 January 1992. Likewise, article 15 of the American Convention on Human Rights, ratified by Brazil on 8 July 1992, states that “[t]he right of peaceful assembly, without arms, is recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.” We observe that the right of assembly is essential to the enjoyment of various rights such as freedom of expression, the right of association, and the right to defend human rights¹. States furthermore have an obligation to not only refrain from violating the rights of individuals involved in an assembly, but to ensure the rights of those who participate or are affected by them, and to facilitate an enabling environment. (A/HRC/31/66 para. 13).

With regards to the requirement to give five days prior notice in the event of public manifestation, we are concerned that the implementation of this decree may serve to inhibit spontaneous demonstrations. Notification procedures should be subject to a proportionality assessment and their objective should be solely to facilitate the exercise of the right to freedom of peaceful assembly, to protect public safety and order and to facilitate the rights of others. (A/HRC/31/66 paras. 21 & 22).

We wish to underscore that failure to notify authorities of an assembly does not render it unlawful, and consequently should not be used as a basis for dispersing the assembly. We further note that this applies equally in the case of spontaneous assemblies, where prior notice is otherwise impracticable or where no identifiable organiser exists. (A/HRC/31/66 para. 23). In the event of failure to notify authorities of a demonstration, the organisers should not be subject to criminal or administrative sanctions resulting in fines or imprisonment. (A/HRC/20/27 para. 29).

¹ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. 31 December 2011. Para. 106.

Likewise, the Inter-American Commission on Human Rights (IACHR) has stated that the requirement established in some laws that advance notice be given to the authorities before a social protest may be held in public places, cannot function as a covert authorisation mechanism. In its report on “Criminalisation of Human Rights Defenders,” the IACHR has indicated that the exercise of the right of assembly through social protest must not be subject to authorisation on the part of the authorities or to excessive requirements that make such protests difficult to carry out². The requirement of prior notification must not be confused with the requirement of prior authorisation granted as a matter of discretion, which must not be established in the law or practice of the administrative authorities, even when it comes to public spaces³. We express our concerns that the prior notification procedure outlined in the Decree has been implemented in order to inhibit spontaneous or successive demonstrations and thus violates the right to freedom of peaceful assembly as guaranteed by Article 21 ICCPR.

We further express our concerns over the requirement outlined in the Decree which stipulates that, in cases where public displacement is foreseen, the intended itinerary must be defined jointly with the Commander of the Territorial Battalion of the Military Police. This requirement may excessively hinder the right to freedom of peaceful assembly, which includes the right to plan, organise promote and advertise the assembly in any lawful manner, and amount to what may be in effect a requirement for prior authorisation. Communication and dialogue by assembly organisers must be entirely voluntary, and must not formally or informally impose on the organisers the expectation to negotiate the time and place of the assembly with authorities, as such requirement would be tantamount to restricting the planned assembly (A/HRC/23/39 para. 56).

Furthermore, the requirement to notify and jointly plan with Military Police, rather than local law enforcement, gives rise to additional concerns. As a general rule, the military should not be used to police assemblies. In instances where it is necessary to use the military, they should be subordinate to civilian authorities. (A/HRC/31/66 para. 66).

We are also concerned over the provision in the Decree which prohibits the use of masks and other items which conceal the face of protesters, as both scarves and gas masks may fall into this category, items which may be used by demonstrators to protect themselves from the effects of tear gas in cases where it may be used in order to disperse protests.

We further express concerns that the use of such facial coverings may give rise to criminal sanctions against the user. While the purported justification of this restriction is to facilitate identification of demonstrators, we remind your Excellency’s Government that such restrictions must be necessary and proportionate to the aim pursued, and a blanket ban on the use of facial coverings in the context of manifestations may constitute an a priori assumption of criminality. We note that facial coverings do not necessarily

² IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66 31 December 2011. Para. 137 and 139.

³ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66 31 December 2011. Para. 137.

prevent identification, as such can be removed in the case of arrest for criminal behaviour.

Moreover, the Rapporteurs note that in the context of public demonstrations is very common to use bandanas, masks, hoods, caps, backpacks and other types of clothing and accessories in public. These elements cannot be considered sufficient signs of threat of use of violence, nor be used as grounds for dispersion, detention or repression of demonstrators. The IACHR has emphasised that, in a democracy, the States must act on the basis of the legality of the protests or public demonstrations and under the assumption that they do not constitute a threat to public order. This implies an approach focused on the strengthening of political participation and the construction of higher levels of citizen participation.

While the constitution of Brazil prohibits the carrying of weapons during public assemblies, we are concerned that the wording of the decree expands this prohibition beyond the specifications of the constitution by banning items such as sticks, which may be interpreted as including flagpoles, and which represent a licit exercise of the right to freedom of expression as contained in Article 19 ICCPR.

Regarding the Decree, we finally note that, in order to satisfy the requirements of lawfulness, any restriction on the right to freedom of peaceful assembly must have a legitimate and formal basis in law (A/HRC/31/66 para. 30). We note that the Decree is an issuance of the Executive branch of the State, and express our concerns that such may constitute an overreach into the domain of the Legislature, which is responsible for defining the parameters of legality. We urge your Excellency's Government to order the rescission of the Decree in order to allow full realisation of the right to freedom of peaceful assembly in São Paulo.

In light of the above, we urge your Excellency's Government to consider ordering the rescission of the Decree in line with Brazil's obligations under international human rights standards. We wish to reiterate that the right to freedom of peaceful assembly is a cornerstone of any democratic society, and the degree with which such right can be exercised may be a lens through which the liberality of a society is measured.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information regarding the steps taken by your Excellency's Government to ensure that all forms of regulations and legislation adopted is in line with international human rights standards, including Article 21 of the International Covenant on Civil and Political Rights.

We finally urge your Excellency's Government to continue its cooperation with the mandates of the Special Procedures of the Human Rights Council, to take into

account the concerns raised, and to avail of any technical assistance that Special Procedures may be able to provide in order to ensure the full promotion and protection of human rights in Brazil.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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