



**WRITTEN SUBMISSION ON HUMAN RIGHTS COUNCIL RESOLUTION 44/20 BY THE
INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS (INCLO)**

Submitted to: The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association
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Re: Submission to 50th HRC session report

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INTRODUCTION

1. This written contribution is submitted to the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association (“UNSR”) by the International Network of Civil Liberties Organizations (“INCLO”) in response to the call for inputs for the report by the UNSR to be presented at the 50th session of the Human Rights Council. The report called for by the Human Rights Council Resolution 44/20 is to be dedicated to the protection of human rights in the context of peaceful protests during crisis situations. This written contribution includes input by 14 INCLO member organizations and is endorsed by 13 INCLO members. It relies on in-text hyperlinks for ease of reference.

ABOUT INCLO

2. INCLO is a network of 15 independent, national human rights organizations from different countries in the North and South that work together to promote fundamental rights and freedoms by supporting and mutually reinforcing the work of member organizations in their respective countries, and collaborating on a bilateral and multilateral basis.¹ INCLO works on four thematic issues: (1) protest rights and policing; (2) surveillance and human rights; (3) religious freedom and equal treatment; and (4) protecting civic space. The responses included in this written submission are based on efforts led by INCLO members and their unique knowledge in the domestic contexts within which they operate. Given their areas of expertise, the contributions included here by INCLO members focus on situations of crisis where unnecessary, excessive, and disproportionate forms of policing by law enforcement, including through the use of “less-lethal” weapons, has negatively impacted the enjoyment of the rights of assembly, association and expression; where protests and dissent have been criminalized and suppressed using militarized policing; and government practices have restricted civic space and disproportionately impacted members of marginalized communities.

RESPONSES TO THE UNSR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION’S CALL FOR INPUT FOR HIS REPORT TO BE PRESENTED AT THE 50TH SESSION OF THE HUMAN RIGHTS COUNCIL

3. The call for a report on the impact of crises on the right to freedom of peaceful assembly and association is very timely. For over a year, the COVID-19 pandemic, and the impact of government responses to it has spread throughout the world. By not grounding their crisis

¹ INCLO’s 15 member organizations are: Agora International Human Rights Group (Agora, Russia), the American Civil Liberties Union (ACLU, United States), the Association for Civil Rights in Israel (ACRI, Israel), the Canadian Civil Liberties Association (CCLA, Canada), Centro de Estudios Legales y Sociales (CELS, Argentina), the Commission for the Disappearances and Victims of Violence (KontraS, Indonesia) Dejusticia (Colombia), the Egyptian Initiative for Personal Rights (EIPR, Egypt), the Human Rights Law Centre (HRLC, Australia), the Human Rights Law Network (HRLN, India), the Hungarian Civil Liberties Union (HCLU, Hungary), the Irish Council for Civil Liberties (ICCL, Ireland), the Kenya Human Rights Commission (KHRC, Kenya), the Legal Resources Centre (LRC, South Africa), and Liberty (United Kingdom). This written contribution was endorsed by all members except Agora and HRLN.

responses in a human rights-based approach, governments have risked creating another pandemic, a “pandemic of human rights abuses,” one that threatens to widen inequality and exacerbate existing patterns of human rights violations. However, the pandemic has not only brought into sharp focus some governments’ willingness to take advantage of a crisis to restrict rights, but — perhaps the most important lesson — is that crises do not affect all equally. This is a common experience that finds reference through the experiences detailed below, despite the different country contexts in which they occur. It is those who courageously took a stand and demanded the full application of their rights, despite the heightened and disproportionate risks, who stand to lose the most by a restricted right to protest and express themselves.

4. This submission seeks to provide context and case studies which detail the barriers to the full realization of rights to peaceful assembly and association during crisis situations. In doing so, it focuses on country-specific examples from the various member organizations within the INCLO network to better enable the UNSR to compile his report with the benefit of country specific examples of instances where peaceful assembly and association was unjustifiably restricted because of crisis situations. These case studies and country-specific contexts may, in turn, assist the UNSR with making recommendations on how these rights may be better safeguarded in ongoing and future crisis situations. We have chosen to prioritize giving a contextual panorama of each of these crisis situations over limiting answers too narrowly in order to highlight the overlapping and mutually reinforcing nature of these crises and the challenge of identifying definite causes and effects.

Health crises

5. The public health, economic, and social emergency caused by the COVID-19 pandemic has had an enormous global impact since it was first detected in late-2019. States have taken a wide array of measures in response to the crisis, ranging from limiting non-essential travel to severely curtailing movement and ordering full country lockdowns to attempt to mitigate and prevent the spread of the deadly virus. In most instances, these measures have had an immediate impact on civil liberties and human rights. More than 108 countries have enforced emergency measures, while 147 countries have introduced measures that affect the right to assembly and 57 that affect freedom of expression.²
6. Despite the need for quick and effective responses to the pandemic, the way these state measures have been implemented has drawn attention to pre-existing practices by some governments that curtail the right to protest and other fundamental rights. It has also shown how crisis responses can deepen authoritarian tendencies and exacerbate existing inequalities, which lead to other forms of crises, from social and political to socio-economic crises, which in turn exacerbate inequalities and discrimination. Since the beginning of the crisis, civil liberties and human rights organizations have monitored and cautioned against the immediate and long-term impacts that these measures can have on human rights, and the chilling effects of their continued and protracted implementation.

² Statistics as of 19 July 2021. The COVID-19 Civic Freedom Tracker: <https://www.icnl.org/covid19tracker/>.

7. Many of these concerns are not new among the human rights community. Government pandemic responses have led to excessive and discriminatory implementation of COVID-19 responses in countries such as the United Kingdom, Canada, and Colombia where people of color, the economically vulnerable, and people in prison who are already disproportionately targeted by law enforcement and the prison-security complex became repeatedly victimized. In India and Indonesia, health measures were used to clamp down on long-term protests and intimidate activists, an approach consistent with previous efforts to quell dissidence. In the United States, Argentina, South Africa, and Kenya, disproportionate use of force by police and military forces to enforce lockdowns or to respond to protests after forced evictions, are symptoms of the concerning trend towards a militarization of public security. These rights violations are undoubtedly tied to the pandemic but are also due to systemic problems including structural racism that are mentioned later in this submission.

Hungary

8. Two additional areas of concern regarding the impact of health crises on the right to assembly have been the use of crisis situations by governments to further concentrate power through emergency decrees and unnecessary and/or vague laws, as well as the restrictions of protests in ways that are inconsistent with the public health goals that they supposedly seek. In March 2020, the Hungarian government declared a national "state of danger" to counter the COVID-19 pandemic and a subsequent law extended the government's power to rule by decree. On 16 June 2020, the Hungarian Parliament voted to end the controversial emergency powers, but civil rights groups remain concerned that those emergency powers will be integrated into normal law. Their fears were substantiated, as after the parliament enacted the new law, intending to empower the government to tackle the next waves of the pandemic, the government declared a state of danger again.
9. The Hungarian government also introduced a general ban on protests allegedly to counter the COVID-19 pandemic. As a result, two independent Members of Parliament (MPs) and an opposition party called for weekly driving demonstrations to protest the government's decision to evict current patients to free up hospital beds as well as other failures in dealing with the health crisis. In response, police cracked down and allocated excessive, and in some cases, repeated fines to protesters. The organizers finally decided to cancel the sixth protest after the overwhelming number of fines. Judicial reviews at the end of 2020 modified the fines to warnings. The crackdown on these protests that respected social distancing guidelines were in sharp contrast to the Hungarian government's response to a protest organized by far-right groups that gathered several thousand people in Budapest on 28 May 2020. The reasons for the different treatment of protests by law enforcement remains unclear, but it has undermined public confidence in the authorities and has led to uncertainty among citizens intending to protest in the future.

10. The first blanket ban was lifted on 17 June 2020, but then ordered and sustained during the second and third wave of the pandemic with effect from 11 November 2021. To prevent any protests, the government introduced harsh penalties: organising an assembly became punishable up to HUF 1,000,000 (approximately EUR 2,800); participating in an assembly became punishable up to HUF 500,000 (approximately EUR 1,400). Sanctions were not only prescribed, but also applied on several occasions, which created a strong chilling effect on citizens, and de facto abolished the right to assemble. The ban - which was not applied to sport events, religious ceremonies, funerals and private gatherings - was upheld till 23 June 2021.
11. The general ban was challenged before the Constitutional Court of Hungary (CC) via constitutional complaint in February 2021 by the organizer of a single driving protest, but the CC refused the complaint and established some vague constitutional requirements only for the lawmaker for the future. The Hungarian Civil Liberties Union (HCLU) and the Hungarian Helsinki Committee also turned to the Parliamentary Commissioner for Fundamental Rights of Hungary (the National Human Rights Institution) in September 2020, requesting him to examine the administration of the driving protests by the police and to suggest the government to introduce less stringent measures on the right to protest instead of the general ban in case of the further waves of the pandemic. The NGOs argued that a general or blanket ban is neither necessary nor proportionate, and therefore constitutes a violation of the right to peaceful assembly. The Commissioner did not take any actions, and after ten months in his response to the civil rights groups he refused to start examination.

Russia

12. In Russia, the Parliament approved a law allowing the federal and regional authorities to enact unchecked restrictions on human rights in the course of a so-called “high alert preceding a situation of emergency”. This vague regime of “high alert” was used instead of the pre-existing “quarantine”, “situation of emergency”, and “state of emergency” procedures, all of which had more precise and certain legal frameworks. Russia’s Criminal Code was amended to include specific sanctions for those violating quarantine rules and established prison sentences of three to five years for the public dissemination of false information that threatened the public health. Administrative (regulatory) offences for epidemics-related “fake news” had also been introduced, carrying fines starting from USD400. These measures during a health crisis not only had an immediate impact on the ability of ordinary people, journalists, and activists to voice their concerns regarding the government response to the pandemic and its economic impacts but could lead to a longer-term weakening of a civil society that is already persecuted by the current authoritarian government.

South Africa

13. A consistent and overarching trend in the context of the COVID-19 crisis is that in many instances a public health crisis was not treated as such. Instead, and with specific reference to South Africa, the disproportionate implementation and enforcement of lockdown regulations shifted emphasis to the criminal justice system and penalized marginalized and vulnerable

communities for trying to make a living as opposed to protecting and supporting these communities in a time of crisis. So far over 400,000 people have been arrested for regulatory offences. This remains an underlying trend in the militarization of policing services. Different crises should be managed based on the prevailing circumstances and not with a “catch-all” criminal justice or militarized response. In crises, people are vulnerable, and these vulnerabilities should be fully acknowledged.

Ireland

14. The liberal use of states of exception and broad emergency measures during the pandemic has been another area of concern for civil rights monitoring groups. In Ireland, the dangers of emergency powers, without a clear end date, mobilized the Irish Council for Civil Liberties (ICCL) to closely monitor proposed emergency legislation. Their in-depth analysis, which raised concerns about the unnecessary nature of a blanket ban on all demonstrations, was sent to all members of the Irish Parliament ahead of the Parliamentary debate on new emergency legislation to respond to the pandemic in March 2020 and ultimately secured a sunset clause. ICCL continued to monitor the impact of the Covid-19 restrictions on the right to freedom of assembly; calling repeatedly for the right to protest to be included as a reasonable excuse to leave home during full lockdowns. They also called for clear guidelines from the government to assist protesters in organizing small, safe protests during the respective lockdowns.

United Kingdom

15. Similarly, Liberty alongside a coalition of civil society groups monitored the development of the emergency Coronavirus Act in the United Kingdom. These monitoring efforts led to the inclusion of a provision providing for a parliamentary vote on the extension of the legislation every six months.

Canada

16. In Canada, several provinces took steps to amend their emergency laws, attempting to broaden powers conferred on the executive branch during an emergency. In Alberta, for example, the government rushed through legislation that retroactively sought to validate legal orders that it had previously made as part of the state of emergency and expand the powers of the executive going forward. The changes to the law were widely criticized and a special committee was charged with reviewing the changes. The Canadian Civil Liberties Association (CCLA) made submissions before that committee and the government has since promised to repeal the changes to the law. In Ontario, the provincial government also rushed through legislation to allow it to continue to exercise extraordinary emergency-like powers, despite ending the official state of emergency and significant concerns being raised by the CCLA and other civil society groups.
17. For further examples on how government pandemic responses has led to the criminalization of protests, excessive and discriminatory implementation of pandemic measures, and illegal and disproportionate uses of force of law enforcement, as well as how civil society groups have responded to these human rights violations, please refer to INCLO's issue paper "Protesting During a Pandemic: State Responses during COVID-19."

Humanitarian crises

India

18. In India, abrupt measures by the government in the face of the COVID-19 pandemic, including multiple national lockdowns and the almost immediate closure of major forms of transportation triggered a crisis for informal and migrant workers in the country. After the first of several extensions of the lockdown was announced, thousands of jobless migrant workers gathered to protest near a prominent railway station in Mumbai. They demanded to be allowed to travel to their homes, but were forcibly dispersed by police with batons. In a separate incident in Surat, Gujarat, more than 500 textile workers protested a lack of food supplies and demanded to be allowed to go home. Due to a prohibition of interstate travel during the lockdown that shut down most train or bus services, thousands of people attempted to walk to their homes or to bigger cities thus defeating the purpose of the lockdown.
19. Rather than addressing the root cause of the demonstrations, the Indian police's heavy-handed response violated not only the right to assembly of the many workers but failed to

appropriately address a crisis that left many unable to provide the minimum necessities to live for themselves and their families. The difficulties caused by the pandemic were accentuated by the government measures that did not give many people time to return home or consider alternative plans given their precarious work situations. Eventually, the government announced food aid for 800 million people, but many complained that the support had not reached them. These positive steps by the government were due, in large part, to pressure public interest organizations placed on the government through court processes. The Human Rights Law Network (HRLN) issued several petitions in the Supreme Court seeking immediate relief to the most vulnerable during various national lockdowns. In particular, it successfully filed a petition to the Supreme Court asking for support to the many migrant workers stranded during the lockdown — including facilitating their travel home and providing meals and water — which led to the announcement of a Relief Package by India's Finance Minister.

Crises of systemic discrimination against particular groups

20. Historical and systemic discriminatory practices affecting people of African descent and Africans, especially regarding policing practices, the unnecessary use of lethal force, profiling, and disproportionate levels of incarceration, have a long history in many of the countries where INCLO members work. Due to this pervasive structural and institutional racism, these abusive practices go largely unaddressed, and governments persistently fail to acknowledge this issue and ensure access to fundamental rights to all without discrimination, including people of African descent, Africans, and other ethnic and racial minorities. These concerns and their impact on the right to protest were explored in detail in the OHCHR's recent report on systemic racism.
21. These pervasive racial disparities in the enjoyment of the right to assembly became further crystallized in the different responses from law enforcement to those protesting during the pandemic, especially the world-wide wave of demonstrations inspired by the murder of George Floyd, and many other Black men and women. Despite the risks posed by COVID-19 pandemic, demonstrations sparked by systemic discrimination were a prominent part of 2020, and so was the excessive use of force by law enforcement and the criminalization of protests as a tactic disproportionately levelled against communities of color by law enforcement institutions.

Australia

22. In June 2020, massive Bla(c)k Lives Matter/Aboriginal Lives Matter protests took place across Australia, including many tens of thousands of people in Sydney and Melbourne. Organizers distributed masks and hand sanitizer and took extra measures to allow social distancing. However, the Australian Prime Minister made a statement that protestors marching for Black Lives Matter threatened the country's economic recovery from the pandemic and should be charged if they marched. This statement came just days before the Prime Minister announced football stadiums with crowds of 10,000 were to reopen the following month. Some government ministers suggested Black Lives Matter protesters should lose social security

payments, with one minister calling for protesters to hand back health-related payments in advance of attending the protests. Several protests were cancelled after being ruled unlawful by the courts.

Colombia

23. In Colombia, police violence continues to be legitimized and concealed by government institutions making it difficult to hold law enforcement accountable and allowing impunity to run rampant. The relationship between socio-economic and racial inequality and police abuse has become even more pronounced during the pandemic. After heavy police repression occurred during #9S protests on 9, 10 and 11 September 2020, Cerosetenta, an independent digital journalism platform, conducted an investigation using more than 200 videos collected on social media that indicated that police disproportionately used excessive force when responding to demonstrations in middle-class or poor neighborhoods. Data regarding shots fired and people injured and killed by police were consistent with the trends found in investigations carried out by Dejusticia in 2013 and 2015, both focused on police forces, security, and inequality. These investigations found that those most likely to suffer from police abuse were lower-income persons that identify as Black or indigenous and whose appearance is connected to an urban subculture.
24. Most recently, the effects of structural racism in policing practices and government policies were seen in authorities' response to the Minga, an Indigenous movement and in the disproportionate levels of violence used by law enforcement during protests in the city of Cali, whose population is mostly Afro-descendant, within the context of the 2021 national strike. Between 28 April 2021 and 6 June of the same year, the database of CODHES registered 107 homicides, 39 of these victims were visibly Afro-descendant which corresponds to 36% of the total homicides in the city. The Proceso de Comunidades Negras-PCN reported 15 cases of gender-based violence against Afro-descendant women, 26 forced disappearances, 7 detentions (mostly arbitrary) and 36 homicides. In total, there were 82 Afro-descendants between ages 13 and 60 who were victimized. This has been in large part exacerbated by racist and stigmatizing statements made by members of the executive and legislative branch of governments, as well as national media channels that have criticized different ways of exercising the right to protests (such as bringing down status in different areas of the country).

United Kingdom

25. In the United Kingdom, Liberty warned that handing police broad powers to enforce restrictions on movement and gatherings during the pandemic, and urging them to use “their discretion” when applying them, would lead to marginalized communities, including communities of color, bearing the brunt of further arbitrary policing. Analysis conducted by Liberty’s independent investigative journalism unit, Liberty Investigates, found that nationally people of color were over 50 per cent more likely than white people to be handed a fine for breaching lockdown regulations. There is no statutory right of appeal against fines. The only route available to people who wish to challenge a fine they believe was unfairly levied is to

refuse to pay and risk criminal prosecution. A group of lawyers and civil society organizations (CSOs), which included Liberty, wrote to the National Police Chiefs Council (NPCC) on 20 May 2020 to call for a wholesale review of all fines that had been issued, which could help explain the ethnic disparities. The Joint Committee on Human Rights recently called for a similar review of all FPNs issued throughout the pandemic. In addition, Liberty revealed that the handing of extraordinary powers to the police during the coronavirus lockdown had led to greater discriminatory stop and search on communities of color.

United States

26. In the United States, the disparities in police responses to demonstrations during the pandemic were stark. Anti-lockdown protests in a dozen states, some by mostly white, armed protesters, were met with peaceful police responses. These responses and the largely passive police response to the violent insurrection by a white supremacist mob at the US Capitol on 6 January 2021, stood in stark contrast with the quick, violent, and militarized response to Black Lives Matter (BLM) protesters demonstrating nationwide after the murder of George Floyd in Minneapolis and other similar incidents. During the numerous anti-racism and anti-police brutality demonstrations held across the country, police used excessive and indiscriminate force against protesters, who experienced injuries, and sometimes death from tear gas, pepper spray, rubber bullets, and other crowd-control tactics used by the police. Former Attorney-General Barr authorized the deployment of hundreds of heavily armed riot police and unmarked federal officers in military-style uniforms who engaged in the suppression of anti-police violence protests. Peaceful protesters were arrested and detained en masse: over 17,000 protesters were arrested in the first two weeks following George Floyd's murder alone. In the vast majority of these cases, charges against protesters were dropped, dismissed, or otherwise not filed, indicating that the mass arrests were baseless.
27. These police responses are taking place within a context of broader racial disparities in policing, in which Black people are arrested at far higher rates than white people, in large part because broken-windows-style policing targets minor misconduct in low-income Black and Latinx communities that would escape police attention in wealthier white communities. This is a product of racially disparate police enforcement patterns rather than race-based differences in the underlying conduct.
28. Current patterns of policing show the inability and unwillingness of law enforcement in the United States to abide by international standards of proportionality, necessity, non-discrimination or the importance of prioritizing de-escalation, and those same issues are present in responses to other forms of crisis related to community safety and health. In the United States, conversations around reducing police departments' role, presence, responsibilities, and funding seek to reduce police interactions, and in turn, help put an end to racist police violence. Prohibiting police from enforcing a range of non-serious offences, including issuing fines and making arrests for non-dangerous behaviors, would eliminate many of the unnecessary interactions between the police and community members that have led to so much violence and numerous deaths. Alternatives like civilian-led crisis intervention teams

composed of highly trained professionals, including nurses, doctors, psychiatrists, and social workers, could respond to incidents with people who are in mental health crises and avoid further deaths. For instance, following the unjust killing of Walter Wallace Jr at the hands of the Philadelphia Police Department on 26 October 2020 while he was experiencing a mental health crisis, the American Civil Liberties Union (ACLU) of Pennsylvania took a lead in campaigning for police divestment in Philadelphia. The campaign addressed the failure of previous reforms that relied on more police training and called for city officials to divest from the Philadelphia Police Department and invest in community-based services and responses for people in crisis.

29. More information and cases regarding the excessive use of force by law enforcement against Africans and people of African descent can be found in the INCLO submission to the Office of the High Commissioner for Human Rights (OHCHR).

Social & political crises

Colombia

30. The pandemic caused by COVID-19 has had strong economic and social repercussions in Colombia where the statistics for poverty, economic, gender and ethno-racial inequality, malnutrition, unemployment, lack of education, health, and basic services, and police violence have steadily increased. Coupled with growing frustration over corruption cases and a proposed tax reform, they have led to multiple social mobilizations including a national strike that began on the 28 of April 2021. A report published by the Inter-American Commission on Human Rights (IACHR), after an official visit in June 2021, found that the strike and ongoing protests since then stemmed in response to all of the structural social problems, but also to the lack of accountability for the increase in murders of human rights defenders, especially those from Indigenous and Afro-descendant communities.
31. In response to the protests, the Colombian government has taken several decisions and promoted initiatives to restrict the right of assembly. An expedited decree called on the military forces to support the National Police to control public order. In practice, this decree meant the militarization of several cities and many routes at the national level. The modification of the Directive 008 of 2016 by the Office of the Public Prosecutor widened the interpretation of types of conduct within the context of the right to assembly and association that could be criminally prosecuted. Other legislative proposals sought to criminalize protests further by seeking a general prohibition of road blocks as a peaceful form of protest or create an “anti-vandalism and anti-disturbance” law, among others. Equally as damaging has been the declarations by executive and legislative authorities that stigmatized organizers and protesters accusing them of being part of illegal armed groups and of committing terrorist acts without any concrete proof. This posture by governmental authorities coupled with a lack of recognition of the systematic violation of the right to protest due to illegal and arbitrary actions from the police has allowed the lack of control of police abuse and violence to fester, as well as a disregard for investigating violations and ensuring accountability.

32. This context of wide impunity led to numerous cases of police abuse and violence through the use of illegal, arbitrary and disproportional use of force, of use of lethal and less-lethal weapons, that have included deaths, injuries, ocular injuries, sexual violence, forced disappearances, and the targeting of journalists and human rights defenders. Arbitrary arrests under the guise of moving individuals for their own safety were used to begin prosecution procedures. Civil society groups, warned that the conflict and violent repression of demonstrations concentrated in communities with largest ethno-racial minorities, such as the city of Cali with the largest Afro-descendant community in Colombia and the second largest in Latin America, and Cauca, where the largest percentage of Indigenous people in Colombia live (read further in page 9). Similarly, the IACHR was alerted of the grave impact of repression of demonstrations when those apprehended were leaders in Indigenous communities. Police also turned a blind eye to violence perpetrated by armed civilians against protesters.
33. Some positive opportunities and practices have arisen because of the social organizing and dialogues stemming from these latest mobilizations. There has been an active exchange between the national and local governments and those who organize and participate in demonstrations to hear their demands and make general plans of action. This has largely been a result of a rich organization within the social movement that convoked the national strike to demand protection of rights when confronted with police violence, guarantees of the right to protests, and the investigation and sanction of police officers who violate human rights. There has also been more transparency and access to information through the compilation, systematization, and publication of data regarding police actions and their violations of human rights largely due to the work of a wide network of regional verification committees. This has led to further hope for a substantive police reform and the end of the use of criminal law in the context of peaceful protests.

Indonesia / Papua

34. The decades-long conflict between the Indonesian government and the Free Papua Movement escalated toward the end of 2021 leading to the violent repression of protests, but also to a large swath of human rights violations, directly linked with the right to free expression. The deployment of unconfirmed numbers of police and military forces to Papua, as well as the designation of several pro-independence groups as terrorist groups in April 2021 has exacerbated the situation in the provinces of West Papua and Papua where there have been increased reports of extrajudicial killings, torture, arbitrary detention, and a burgeoning humanitarian crisis due to the increase numbers of internally displaced persons.
35. Monitoring conducted by INCLO member KontraS indicated that the extremely militarized response by the government of Indonesia to the region and its use of broad counter-terrorism laws (the most recent being Undang-Undang Anti-Terrorisme No.5/2018) that give police extraordinary powers to use force when conducting raids or interrogating, has led to numerous human rights violations. Papuan activists, civil society groups, and students, have been

harassed, arbitrarily arrested, and even killed. For those placed in detention, a lack of fair trial rights and inhumane prison conditions represent another set of human rights violations and produce a 'chilling effect' on the rest of Papuan civil society. Internet throttling and roadblocks to media workers and NGO seeking to monitor the situation, means that it is extremely challenging to have reliable information regarding the events that lead to assemblies being dispersed and individuals being arrested. This current approach by the Indonesian government is contributing to a further entrenchment of the conflict in the region of Papua and feeding a humanitarian crisis with increases of internally displaced persons.

Crises of poverty and inequality

Argentina

36. In Argentina, the economic impact of lockdown requirements during the pandemic was an immense hurdle for those already struggling to make ends meet while working in the informal sector and the unemployed. Despite this, law enforcement actions and government decisions deepened rather than addressed the challenges of those facing both economic and health crises. In October 2020, over 1 400 families living in the informal settlement, Guernica, were evicted and their homes destroyed and burned by law-enforcement officers. Over 4 000 police officers were involved in the removal of Guernica residents, which included many vulnerable populations, including children, elderly people living alone, women who had fled domestic violence, persons identifying as gay, bisexual and trans. Many of the residents were removed violently and with the use of pepper spray and rubber bullets. 46 residents were detained. Since the end of July, over 2 500 families — previously homeless or in precarious living situations — had settled in this private land in the periphery of Buenos Aires, although the majority had already agreed to reallocate. The Centro de Estudios Legales y Sociales (CELS) and other human rights organizations criticized the handling of the situation, stating that it failed to address the economic and housing crisis the Guernica settlement embodied and that the forced eviction ignored ongoing dialogue that civil groups were facilitating between residents and the provincial government authorities.³

Kenya

37. On May 8 2020, officials in the Kenyan capital Nairobi forcibly evicted 7,000 people living in informal settlements. The evictions were conducted early in the morning with families saying they had received a notice less than 24 hours prior or no notice at all. Houses were bulldozed despite a court order prohibiting evictions. In response, residents and traders blocked a busy bridge to a nearby market in Kariobangi North next to the intersection and burned tires, as they demanded to speak with President Uhuru Kenyatta. Police officers forcefully disrupted and dispersed this protest using tear gas and water cannons. Days later, politicians distributed

³ To read further about how the residents of the Guernica settlements had self-organized as a community and how they were evicted, see the first chapter of Post (2021) published by CELS in Spanish: <https://www.cels.org.ar/web/en/2021/02/new-book-on-human-rights-during-the-pandemic/>.

food parcels and admitted that the evictions had been ill-timed, given the economic uncertainty and movement restrictions during the pandemic.

South Africa

38. In South Africa, COVID-19 enforcement measures failed to take in consideration the challenges of those working in the informal sector or who were already suffering from the effects of economic disparities. The government declared a “state of disaster” that has been enforced by both police and military forces, who have been accused of using excessive force against anyone they find violating quarantine measures, including the homeless. As a result of these measures, large parts of the population were left without work and dependent on government food parcel distribution. By mid-April 2020, insufficient or lack of food distribution and allegations that government officials misappropriated food parcels led to protests. On April 14, a group of 100 residents in Talfesig, Cape Town burned tires and blocked streets demanding better food distribution. Police escalated tensions by responding to protesters with rubber bullets and tear gas. Over the following days, protests spread alongside grocery store looting and clashes with police in Cape Town, Johannesburg, and other cities.
39. Social justice organizations highlighted the impossibility of many to follow safety protocols given their lack of adequate housing or proper access to water and sanitation and advocated for better protections for the most vulnerable. Additionally, there were concerns raised about evictions, removals, and demolitions being carried out in different parts of the country. The Legal Resources Centre (LRC) filed several application proceedings to halt illegal evictions and harassment of residents of informal settlements by the City of Cape Town.
40. The unaddressed impacts of the pandemic have only worsened the simmering discontent over an already untenable economic situation in South Africa including a 70 percent youth unemployment rate. It manifested itself again in the recent protests that were sparked by the imprisonment of former President Jacob Zuma on 9 June 2021. While demonstrations were held to communicate the frustrations regarding another political crisis of credibility, most of the attention was focused on riots that happened in some parts of the country and instances of racially-motivated violence that occurred in the Indian-majority town of Phoenix. Unfortunately, one type of crisis will continue to lead to another, unless long-term issues - such as having almost half of the population over 18 falling under the poverty line and egregiously disparate treatment by police based on class - are fully addressed.

Military occupation and escalated armed conflict situations

Israel / Occupied Palestinian Territory

41. In occupied East Jerusalem, a multitude of violent events unfolded almost simultaneously: tensions and protests over police barriers at the Damascus Gate (a central landmark in both the culture of East Jerusalem and the identity of the city’s Palestinian inhabitants); the

protested and controversial planned eviction of a number of Palestinian families from their houses in Sheikh Jarrah; visits by Jews to the Aqsa Mosque compound during a time when Muslims traditionally gathered for Ramadan festivities; coupled with tension surrounding the annual Jerusalem parade escalated into civil unrest and violence. Hamas rockets were fired at Israel in a supposed response to the situation in Jerusalem, killing 12 civilians including 2 children, and Israel's disproportionate retaliation in Gaza killed over 250 people including 66 children. During this time, unprecedented violence unfolded in Israel's mixed cities highlighting the polarization between Arabs and Jews, and decades of institutional racism and unequal allocation of resources and of discrimination, brutality, and over-policing against Palestinians in East Jerusalem and the Occupied Territories.

42. During this time, INCLO member, the Association for Civil Rights in Israel (ACRI), responded to the needs of the public through its Human Rights Education and Legal Departments. The former provided educators nationwide with anti-racism pedagogic materials and facilitated Zoom discussions to aid teachers in presenting the delicate situation in a meaningful, constructive way. This was done in conjunction with the Legal Department's appeals to authorities to deescalate the highly volatile situation, and ACRI's continued advocacy to educate Israel's youth — many of whom were inciting violence via social media and on the streets — about democracy and anti-racism.
43. During this latest spike in tensions, Palestinian citizens of Israel were disproportionately criminalized compared to Jewish Israeli citizens for committing alleged hate crimes, rioting and other violent attacks. Civil society groups appealed to key government authorities with the capacity to influence and ensure the respect of the right of assembly and free expression for all without discrimination. Calls were also made to the Legal Advisor of the Israeli Police, to remove the checkpoints and barricades in Sheikh Jarrah that violate the freedom of movement and expression; to the Police Commissioner, to demand a stop of the use of skunk water and violent crowd control measures used by the Police against protesters throughout Israel, and especially in East Jerusalem; and to the Chief of Police, reminding him of acceptable police procedures during demonstrations. Groups also appealed to the Minister of Defense asking him to cancel the declaration of a civil emergency and curfew in Lod, which was enacted outside the given legal authority.

CONCLUSION

44. The importance of documenting and further analyzing the impact of crises to the right of assembly and other interrelated rights has been heightened by the collective experience of a global pandemic and the undeniable challenges to universal human rights that has accompanied it. It would be however a disservice to simply place the blame on COVID-19 or even only on government responses to the pandemic and not acknowledge the many unaddressed issues that led to the different forms of crises acknowledged in this submission were present well before the pandemic. Not only do crises mean periods of time when higher levels of human rights violations occur, but it also tends to be accompanied by a further

entrenchment of problematic policies by government vis-a-vis their human rights obligations, such as increase surveillance, concentration of power, criminalization of protests, militarization of public security and targeting of dissidence. These challenges overlap and reinforce each other so that it is very difficult - and unproductive even - to view these different forms of crises as silos.

45. To consider each of these modes of crises allows us to better identify the human rights that have been less securely embedded, that need further implementation and strengthening or that are the first to be violated with impunity by both democratic and authoritarian governments alike. The crucial nature of the right to protest peacefully as a key component to a healthy, diverse, and democratic society is almost invariably deprioritized and weakened during times of crisis, even though it is the time where it is perhaps the most needed. This highlights the importance for the international human rights community to further strengthen and clarify provisions on the limits of derogations and states of exception. However, that alone will never be sufficient when there continues to be a lack of accountability for basic rights violations in times of crisis by governments who abuse their emergency powers and normalize these violations with little or no checks and balances. Finally, crises shed light on the unequal burden placed on groups that are already marginalized and who in normal circumstances cannot enjoy their rights equally.
46. INCLO is thankful to the UN Special Rapporteur on the Freedom of Peaceful Assembly and Association for their consideration of this contribution and remains at its disposal for any further consultation that would benefit the preparation and drafting of the report pursuant to Human Rights Council resolution 44/20 on protection of human rights in the context of peaceful protests during crisis situations.

ENDS.