

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

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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 promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 41/12, 43/4, 43/8, 43/36 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the recent "Security for All Danes" bill, submitted by your Excellency's Government to the Danish Parliament on 8 October 2020. If adopted into law in its current version, this bill may have a grave impact on the civic space and fundamental in particular with the right to freedom of peaceful assembly.

According to the information received:

Police forces are allowed to issue a general ban on assembling in a defined geographical area, when the behaviour of a group of individuals is creating insecurity for people living or moving in it. The security-creating ban must be considered an appropriate tool to restore security in that area, with no other measures available to sufficiently address the situation. It is up to the chief commissioner of police, or a person authorized by him, to make a professional assessment of the specific situation in the area in question as to whether the conditions for issuing a security-creating assembly ban are met. The decision should be published and mention a list of the reasons that led to this ban and should also specify a defined geographical area and time-period within which the decision applies.

Such ban can be issued for a maximum period of 30 days, extended for 30 days at a time, when deemed necessary, to restore security. Under certain conditions, the ban can apply only for a certain period of the day. Pursuant to Section 6b (1), a security-creating assembly ban shall not hinder normal movement in the area.

The violation of the ban is punished by means of a fine, set in its minimum at DKK 10,000, unless mitigating circumstances apply. A prison sentence, stretching from 30 days to one year, is required in case of repeated violation.

The right to freedom of peaceful assembly, guaranteed by article 21 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Denmark on 6 January 1972 and by article 11 of the European Convention on Human Rights (ECHR) ratified on 13 April 1953, is a fundamental right which should be guaranteed and enjoyed by people in any democratic and peaceful society. An “assembly”, generally understood, is an intentional and temporary gathering in a private or public space for a specific purpose, and can take the form of demonstrations, meetings, strikes, processions, rallies or sit-ins with the purpose of voicing grievances and aspirations or facilitating celebrations (A/HRC/31/66, para. 10; A/HRC/20/27, para.24). The right only protects the right of peaceful assembly. We would like to emphasize that the Human Rights Committee in paragraph 15 of its General Comment No. 37 (2020) indicates that “the right of peaceful assembly may, by definition, not be exercised using violence”. In the same paragraph, the Human Rights Committee also defined the use of violence as “the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property”. Furthermore, in a previous report, it was reaffirmed the existence of “a presumption in favour of considering assemblies to be peaceful” that “should apply to everyone, without discrimination and should be clearly and explicitly established in the law, enshrined either in constitutions or in laws governing peaceful assemblies” (A/HRC/23/39, para. 50 (2013)). Moreover, on 20 March 2019, the Special Rapporteur on freedom of peaceful assembly and of association stated that the right to freedom of assembly serves as a vehicle for the exercise of many other civil, cultural, economic, political and social rights. Indeed, the free expression of shared values, points of view or opinions through peaceful assembly on the streets or in other public places is one of the most important foundations of any democratic and peaceful society. The right to peaceful assembly promotes diversity and public debate, and thus, represents a major instrument through which individuals can trigger social change. Such flexibility is necessary in a democratic society based on respect of each of its members. Thus, this right should not be restricted arbitrarily. Though not of an absolute nature, the imposition of any restrictions on this right should be guided by the objective to facilitate the exercise of this right, rather than seeking to place unnecessary or disproportionate limitations on it. Such a position was affirmed by the Human Rights Committee in the case *Turchenyak et al. v. Belarus* (July 2013) and in the recent General Comment No. 37 (2020). Thus, it is clear that restrictions permissible under the Covenant on civil and political rights should be guided by the principle of proportionality and necessity in democratic society.

We are afraid that the proposed bill could create a hostile environment for the exercise of the right to peaceful assembly, the right to freedom of expression, and interrelated rights.

#### *Principle of legality*

We are seriously concerned that the bill would allow for criminalization of peaceful assembly if the behaviour of a group in a certain area creates “insecurity”, which does not seem to be further defined. As outlined above, Section 6b (2) of the bill criminalizes conducts when the “behaviour of a group of people in the area in question is creating insecurity for people living or moving in the area”. The unclear definition of what might constitute a behaviour “suitable to create insecurity”, a “group of persons” or a “normal movement”, is worrisome, because of its sweeping nature that leaves it open to diverse interpretations. Under international law, any restriction must have a legal basis, indicating that it should be prescribed by law,

which implies that its provisions must be formulated with sufficient precision and that the law must be accessible. The European Court of Human Rights (ECtHR) on numerous occasions recalled this obligation, for example, in *Kudrevičius and Others v. Lithuania* (November 2013) or *Gillan and Quinton v. the United Kingdom* (2010). Consistent with the European jurisprudence, According to the joint report A/HRC/31/66 (2016) the law should be unambiguous, and “sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and also foresee the likely consequences of any such breach” (para. 30). Broadly worded restrictions to the freedom of peaceful assembly are not only incompatible with the requirement of legality, but also risk making the scope of the restrictions wider than those required to achieve the legal objective.

Furthermore, we are concerned about the particularly broad legal discretion left to the chief commissioner of police or to the person instructed by him, who is in charge of assessing the existence of a threat. Due to the vague formulation of the law, the executive power is given an extensive and undefined margin of appreciation when interpreting the conditions imposed by the bill. We would like to recall that the Human Rights Committee, in its General Comment No. 27 (1999) indicates that “the laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution”. To this regard, the ECtHR stated in *Navalny v. Russia* (November 2019), that to meet the requirement set by the principle of legality, a law must offer sufficient safeguards and guarantees against arbitrary interference. In the ECtHR’s opinion, a law must clearly indicate the scope of such discretion and the manner of its exercise. Additionally, Section 6(b) of the bill makes no reference to the means available for the persons concerned to challenge those decisions. However, we had earlier recalled in paragraph 35 of the joint report A/HRC/31/66 (2016) and paragraph 42 of the report A/HRC/20/27 (2012), “the organizers should be able to appeal before an independent and impartial court, which should take a decision promptly”. Such a position is in line with the Resolution 25/38 of the Human Rights Council (2014), which, inter alia, “urges States to ensure accountability for human rights violations and abuses through judicial or other national mechanisms, based on law in conformity with their international human rights obligations and commitments, and to provide victims with access to a remedy and redress, including in the context of peaceful protests”. Moreover, according to paragraph 36 of the above-mentioned joint report that if the law should provide access to administrative remedies, “exhaustion of administrative remedies shall not be a prerequisite for an organizer to seek judicial review”. In the absence of a sufficiently precise legal framework or means to challenge arbitrary decisions, the draft bill would not be compatible with the principle of legality.

#### *Principle of necessity*

Another concern relates to the extent of the restriction introduced by the bill in the exercise of the right of freedom of peaceful assembly. Article 21 of the ICCPR requires that for a restriction to be acceptable, it must be necessary and proportionate to the pursuit of a legitimate interest such as national security, public safety, public order, the protection of public health or morals, and the protection of the rights and freedoms of others. As the Human Rights Committee stated in *Chebotareva v. Russian Federation’s communication* (March 2012), it is up to the authorities to demonstrate that such requirements are met. If this is not the case, the State would be in violation of article 21.

In this connection, we wish to remind your Excellency's Government that to be in accordance with the requirements of necessity and proportionality, the State must choose the least intrusive measure to achieve the desired result. Indeed, as the Human Right Committee stated in its General Comment No. 31 (2004), when restrictions on a Covenant right are made, "States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights". Moreover, the Human Rights Committee in its General Comment No. 37 (2020) stated that "Any restrictions on participation in peaceful assemblies should in principle be based on a differentiated or individualized assessment of the conduct of the individual and the assembly concerned. Blanket restrictions in peaceful assemblies are presumptively disproportionate". The former Special Rapporteur on freedom of peaceful assembly and of association previously affirmed in the report A/HRC/20/27 (2012) that "prohibition should be a measure of last resort and the authorities may prohibit a peaceful assembly only when a less restrictive response would not achieve the legitimate aim(s) pursued by the authorities". Furthermore, the ECtHR stated in *Christians against Racism and Fascism v. the United Kingdom* (July 1980) that the criteria of necessity and proportionality must be assessed particularly in relation to general bans on assembly. The objectives of the ban, as mentioned in Section 6b of the bill, article 2(1), are the protection of public safety, the prevention of crime and disorder and the protection of the rights and freedoms of others. While we understand the legitimate desire of the Government to prevent disorder and crime in certain sectors, a general ban that would apply to everyone in the area would be a disproportionate measure that goes beyond what is necessary to achieve the stated aims. Indeed, the threat to public order is not generalized in a way that justifies general measures. Therefore, we would encourage your Excellency to consider less severe measures and more desirable means to achieve the desired result in a way that would not impair the essence of article 21.

#### *Principle of proportionality*

We are also concerned about the severity of the penalties imposed in case of violation of the ban. We would like to recall the ECtHR rulings in *Akgöl and Göl v. Turkey* (May 2011) and *Gün and Others v. Turkey* (June 2013), in which the Court argues that no peaceful assembly should be subject to the threat of criminal sanctions, including deprivation of liberty. Additionally, it stated in *Rai and Evans v. the United Kingdom* (November 2009) that for a criminal sanction imposed on participants of a peaceful association to be considered admissible, it is required to be particularly justified. In our view, the fact that the bill imposes a fine of a minimum of DKK 10,000 or a prison sentence up to one year for a second offence could be considered a violation of the required condition of proportionality. Especially, as the current debates in the Parliament suggest even more serious penalties than those already provided for in the bill. Clearly, a prison sentence on the first breach of the ban would be a disproportionate measure.

Ultimately, we are concerned about the broad and imprecise conditions for the imposition of the ban. In particular, we worry that the possibility to ban an assembly for a period of 30 days renewable is not sufficiently construed. Blanket restrictions by nature seriously undermine the rights of freedom of expression and freedom of peaceful assembly, and thus fail to meet the proportionality test. Further, the bill's lack of precision could open the door to the ban being applied in an arbitrary or disproportionate manner. In this regard as mentioned above we would like to remind

your Excellency's Government that the Human Rights Committee stated that any restriction "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly" (CCPR/C/GC/34, para.25). Such a requirement directly challenges the bill, which indicates that mere "insecurity" could mobilize the exception of protection of public order and permit the imposition of the ban. The Human Rights Committee in its General Comment No. 37 (2020) explained that "for the protection of "public safety" to be invoked as a ground for restrictions on the right of peaceful assembly, it must be established that the assembly creates a significant and immediate risk of danger to the safety of persons (to their life or physical integrity) or a similar risk of serious damage to property". Moreover, it has also stated that "restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect" (CCPR/C/GC/37, para.36). We are concerned that in this case, the difficulty of knowing who would be precisely affected by the ban, coupled with the severity of the penalties for the breach of the ban, could have a clearly deterrent effect, jeopardizing the rights of peaceful assembly, association and expression.

In particular, while the formulation of Section 6(b) of the bill might appear neutral, because it only mentions behaviours of a group that may create insecurity, the explanatory memorandum also refers to the appearance of such a group as an indicator of behaviours creating insecurity. When specifying the meaning of "appearance", many references were made to young people, but in particular to young males. Also, the presence of "back marks or other characteristics that may give the impression that the group is part of or associated with a gang or criminal group" is presented as an indicator, though very large. We are troubled by the criteria mentioned, but also by the broad margin of discretion left to the police. Indeed, such generalisation of criteria, based on gender, age, ethnicity or appearance in general, which may affect particularly minorities, would appear particularly dangerous in a democratic society. In the light of Denmark's recent legislation regarding non-western population and immigration and the political declaration surrounding the law, we are deeply concerned that it would indirectly target minorities based on their nationality or ethnic background. We would, therefore, like to recall that under Articles 1 and 2 of the International Convention on the Elimination of Racial Discrimination, Denmark has the obligation to prevent, eliminate, and remedy racial discrimination, including on the basis of national or ethnic origin. Article 5 of the Convention also provides the obligation of States to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law including the right to freedom of peaceful assembly and association. In addition, we would like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4). Moreover, authorities may not discriminate against any group or individual on grounds of immigration or residency status and "enforcement of migration laws cannot take priority over respect for human rights law" (A/71/385, para. 63). Finally with regard to the bill, its explanatory memorandum and previous political statements, we are led to believe that this law could target more modest neighbourhoods. However, even if a link might be established between precarity and criminality in public areas, a general

discrimination based on social origin is utterly incompatible with the principle of non-discrimination.

In this connection, we are seriously concerned that the bill could create an indirect discriminatory treatment especially against specifically targeted groups. We would like to recall that the right of freedom of assembly must be read in the light of the principle of non-discrimination, guaranteed by article 26 of the ICCPR and article 14 of the ECHR. The Human Rights Committee recently reaffirmed this position in its General Comment No. 37 (2020), stating that the right to peaceful assembly imposes a corresponding obligation on State parties to respect and ensure its exercise without discrimination. More specifically, States have the positive obligation to ensure that “laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status [...]” (General Comment No. 37, para.24).

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 be grateful for your observations on the following matters:

1. Please provide any additional comment(s) you may have on the above-mentioned information.
2. Please explain what constitutes according to the bill “group of persons”, “a behaviour suitable to create insecurity” and a “normal movement”.
3. Please provide a framework for the authority of the Chief of Police, or the person delegated by him, to assess the existence of a threat to public order, and please provide information about the safeguards that will be put in part to ensure any decision taken complies with your Excellency’s Government obligations under articles 19 and 21 of the ICCPR. Furthermore, in order to guarantee against arbitrary interference, please provide the means that enables the person concerned to challenge the decisions taken.
4. Please provide information about the criminal penalties for ban violations, with due respect to the principle of proportionality.

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](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting for a reply, we encourage your Excellency’s Government to ensure that the bill is in accordance with its obligations under international law regarding the rights to freedom of expression and freedom of peaceful assembly under articles 19 and 21 ICCPR. To achieve this, the bill should be reviewed, and all imprecise and ambiguous limitations should be removed, in order to ensure this bill does not undermined the protection of human rights and democracy in Denmark.

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

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