

AN URGENT SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHTS OF PEACEFUL ASSEMBLY AND ASSOCIATION REGARDING FLORIDA'S HB 1

Highlighting the concerning rise in repressive legislation and the implications for the rights of Black and Brown people to peacefully assemble and associate.

APRIL 9, 2021



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April 9, 2021

Hon. Clément Nyaletsossi Voule

United Nations Special Rapporteur on Rights to Freedom of Peaceful Assembly and of Association

Dear Special Rapporteur Voule:

The start of this new month marks nearly a year since the police killing of George Floyd on May 25, 2020. The world watched for 8 minutes and 46 seconds as yet another Black person, mind, heart, and soul, was cruelly and senselessly taken away at the knee of a police officer. The death of George Floyd resonated throughout the world. People came together in protests against racial injustice and police brutality in over 60 countries, with some estimates suggesting that between 15 million and 26 million people participated at some point in the demonstrations in the United States.¹ The country experienced an urgent public reckoning on the role of its carceral system, militarized policing, and racially discriminatory policies in systematically depriving Black people and other people of color of their basic human rights.

In a thinly-veiled retaliation against this public reckoning, legislatures across the United States have introduced bills that represent serious threats to the rights of citizens to peacefully assemble and associate. Examples of such anti-protest legislation can be seen in 22 states, with Florida's House Bill 1 ("HB1")² constituting a particularly alarming template. We fear that this rise in repressive legislation will become the norm across the country, creating a society in which people cannot assert their basic right to peacefully assemble and associate. The right to peacefully assemble and associate is fundamental to the protection of human rights and the ability of people to call out abuses and demand accountability. If allowed to pass, these laws would mirror those of various regimes we identify around the world as authoritarian, and severely threaten the future of human rights in the United States.

As you are aware, the United States has ratified treaties to protect the fundamental rights of life, liberty and security of person, non-discrimination, speech, assembly, and due process as provided in the International Covenant on Civil and Political Rights ("ICCPR"), the Convention on the Elimination of All Forms of Racial Discrimination ("CERD") and the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment of Punishment ("CAT"). Yet, the legislation proposed by the state of Florida and others, against the backdrop of severe, militarized repression and ongoing harassment of human rights defenders, call into question their commitment to ensure that these fundamental rights are respected.

We greatly appreciated the March 9, 2021 consultation facilitated by the Global Network of Movement Lawyers at Movement Law Lab, in which human rights defenders from all over the world described a deteriorating climate for the rights to freedom of peaceful assembly and association. We would like to follow on your encouragement to continue engaging with your office to respectfully request that you investigate the anticipated violations detailed below under your thematic mandate as Special Rapporteur on Rights to Freedom of Peaceful Assembly and of Association. We further respectfully request that you make a statement about Florida's HB1 and similar legislation across the United States

¹ Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, Jul. 3, 2020 <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>

² CS/HB 1, <https://www.flsenate.gov/Session/Bill/2021/1/BillText/e1/PDF>

that threaten the fundamental rights of its residents. We cannot overstate the importance of a voice like yours articulating the dangers of rising anti-protest legislation in the United States, and the resulting human rights violations that would occur.

A. National Rise of Retaliatory Anti-Protest Legislation

In the wake of international Black Lives Matter protests, Republican-led state legislatures across the United States have introduced legislation targeted at non-violent protests. Currently 22 states are considering legislation with tough new penalties against protestors. In the first month of 2021 alone, at least 18 new anti-protest bills were introduced in various states.³

Many proposals, such as Florida's HB1, target specific acts seen during protests for racial justice and police accountability, including blocking traffic, verbally confronting police officers and tearing down or defacing monuments honoring the United States' racist past. Kentucky's Republican-led legislature recently passed a bill making it a crime to insult police officers and also increasing penalties for rioting. Tennessee passed legislation in August 2020 that made camping out on state property a felony, imposing a mandatory 45 day hold if convicted of "aggravated rioting" and requiring a court to order restitution for damaging state property.⁴

Civil disobedience has long been used as a form of protest to push for justice, accountability, and greater rights. To the extent these laws seek to increase penalties for protest-related activity, they subject everyone participating in public and political life to heavy-handed punishment.

B. Florida's HB1

I. Freedom of Expression, Assembly and Association (Arts 19, 21, 22 — ICCPR)

These rights form the fundamental basis of any democratic society and constitute the crux of the rights violations that would occur as a result of HB1. These rights are protected under the United States Constitution's First Amendment and are articulated in Articles 4, 19, 21 and 22 of the ICCPR.

Even though Florida's protests were overwhelmingly non-violent, Florida Governor Ron DeSantis introduced an early version of HB1 in September in direct response to Black Lives Matter protests. He rebranded the bill after the violent, white nationalist insurrection at the US Capitol building on January 6, 2021, in an effort to capitalize on the sentiments of the moment. Governor DeSantis has utilized the "law-and-order" rhetoric of the Trump Administration to garner widespread support from his extreme right-wing base. HB1 is Gov. DeSantis' effort to solidify the support of that base at the expense of the human rights of those who seek to challenge police brutality in Black and Brown communities.

As it stands, HB1 criminalizes gatherings in the street, endows symbols of white supremacy — including confederate flags and memorials — with special protections, and limits a city's ability to

³ Arthur L. Carter Journalism Institute, *Anti-Protest Laws in the United States*, First Amendment Watch, Jan. 29, 2021 <https://firstamendmentwatch.org/deep-dive/states-rush-to-pass-anti-protestor-laws/>

⁴ Sanya Mansoor, *New Tennessee Law Severely Sharpens Punishments for Some Protesters, Potentially Endangering Their Voting Rights*, Time Mag., Aug. 23, 2020 <https://time.com/5882735/tennessee-law-protest-voting-rights-felony/>

redirect funds from police to necessary social programs. The definition of “aggravated rioting” is open-ended and contains an unacceptable amount of discretion — no actual violence is required to arrest and convict under this provision. The standard requires mere “common intent” to mutually assist each other in “disorderly and violent conduct.” In addition, the provision targeting memorials is believed to be an attempt to stem the movement’s progress in interrogating public remembrance of the United States’ history of racism, by removing monuments or memorials to the Confederacy.

As one advocate put it, HB1 is an “open assault on the rights of Florida’s Black and Brown families and should be contextualized and reckoned with as such.”⁵ The severe increase in penalties for protest-related offenses indicates an appetite for unnecessary and arbitrary arrests, as well as the targeting of those who are carrying out lawful activities to register dissent. This would significantly restrict the rights to freedom of expression, assembly and association, and would drastically reduce the likelihood of people exercising these fundamental rights.

The history of criminalization of Black communities in the United States portends impacts on assembly and association well beyond protests. Festivals, religious events, informal sporting events, even large family gatherings could be deemed a riot under the bill.

II. Racial discrimination (Arts 2(1), 26 — ICCPR, CERD)

The ICCPR requires equality before the law and non-discriminatory protection of the rights therein, and the CERD underlines these rights. Police practices against protestors, however, have been shown to be discriminatory and offensive towards racial minorities and Black individuals in particular. Anti-protest legislation, such as Florida’s HB1, lays the groundwork to further institutionalize such discriminatory practices.

On September 5, 2020, while participating in a Black Lives Matter protest of less than 100 people marching on a Tallahassee sidewalk, Dream Defenders member Irfan Kovankaya was tackled by a Tallahassee Police officer and experienced his head being brutally pinned under the officer’s knee. Irfan was forced to watch on while other protestors were attacked by officers in riot gear in the presence of a police dog, mimicking the very tactics seen by Southern segregationist departments of the 1960s. Shortly after Irfan’s arrest, Gov. DeSantis announced his intention to pass legislation criminalizing protests. In his own words, Irfan says:

“This law is a direct response to BLM protests and as such will be disproportionately applied to Black and Brown organizers, the same way many of our laws are. We don’t need to look any further than the [Tallahassee] streets I was assaulted on. On the same intersection within the span of a few months a white gunman pulled out a firearm in an attempt to harm BLM protestors. This man was calmly escorted off the premises by 2 officers. Months before that a white truck driver drove into a crowd of BLM protesters. Neither of them face consequences while I await trial for a single count of resisting arrest without violence.”

⁵ Nancy Metayer, *Gov. Ron DeSantis’ HB1 is un-American*, Fla. Pol., Mar. 10, 2021
<https://floridapolitics.com/archives/410912-nancy-metayer-gov-ron-desantis-hb1-is-un-american>

Dream Defenders member Nushrat Nur agrees that “this bill was not drafted with white supremacist violence in mind, otherwise, we’d have seen anti-riot legislation introduced after a white mob killed over 30 Black citizens in an Election Day massacre almost 100 years ago in [her] hometown, Ocoee.” It is clear Gov. DeSantis and the Republican-controlled legislature seek to utilize the same old racist tools to intimidate Black and Brown people from exercising self-determination in demanding equality and human dignity.

At the January 27, 2021 Florida House Criminal Justice & Public Safety Subcommittee hearing on HB1, countless community members delivered public comments recounting similar experiences of police violence directed at protestors. Dream Defenders member Sana Hafeez testified that Orlando police officers often instigated violence by white racist vigilantes who attacked peaceful protestors. She told lawmakers that she opposed this bill because it would further encourage such acts of state sanctioned violence. “The message is clear,” she stated, “Black and Brown bodies are less valuable than monuments of hate.” Various other speakers described their experiences being tear gassed and maced by officers, while others reported numerous incidents of white, racist counter protestors using their vehicles to harm those working to fight systemic racism.⁶

Carrie Boyd, policy counsel from the Southern Poverty Law Center Action Fund, noted that existing data from countless studies shows that the Black community is over-policed, over-incarcerated and overcharged. Police in full riot gear were often used to confront Black Lives matter protestors and used tear gas and rubber bullets to disperse crowds while the show of force hasn’t been equally applied to right-wing protests.⁷ There is no reason to believe that the application of HB1 would be any different than every other law in the United States criminal legal system.

III. Excessive force and Cruel, Inhuman and Degrading Treatment (Arts 6, 7 — ICCPR, Arts. 1, 2, 4, 14, 16 — CAT)

The widely documented use of excessive force against protestors are violations of the right to life and the absolute prohibition on torture or cruel, inhuman and degrading treatment under the ICCPR and the CAT. The use of force and related acts of intimidation by combined law enforcement against demonstrators have been disproportionate and excessive, designed to place protestors in fear of imminent harm and to punish them for engaging in peaceful protest. By increasing penalties for a range of protest-related offences, HB1 once again lays the groundwork for institutionalizing such excessive tactics.

HB1 creates additional incentives for excessive force by police in protests and public gatherings. The bill introduces an exception to sovereign immunity, holding cities who exercise restraint over police tactics liable for civil damages resulting from an “unlawful” assembly.

HB1 goes so far as to potentially absolve a person of liability for killing or injuring someone with their vehicle if they were “fleeing for safety from a mob.” This provision is eerily reminiscent of the 2017 case of a white supremacist in Charlottesville, Virginia who drove into a crowd of “Unite the Right”

⁶ Sana Hafeez, *House Criminal Justice & Public Safety Subcommittee*, Fla. Channel, Jan. 27, 2021, at 38:00 <https://thefloridachannel.org/videos/1-27-21-house-criminal-justice-public-safety-subcommittee/>

⁷ Sophie Quinton, *Republicans Respond to Black Lives Matter with Anti-Protest Bills*, Pew Charitable Trusts, Feb. 4, 2021 <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/02/04/republicans-respond-to-black-lives-matter-with-anti-protest-bills>

counter-protestors and killed a young woman by the name of Heather Heyer. This tactic of striking protestors with vehicles has surfaced more recently at anti-racism and anti-police brutality demonstrations across the United States in the wake of George Floyd's killing. According to the University of Chicago's Project on Security and Threat, there have been at least 104 incidents of people driving vehicles into protests from May 27 through September 5, including 96 by civilians and 8 by police.⁸ Although blocking traffic is unlawful, that is a common tactic used in peaceful protests worldwide to show civil disobedience and call attention to the injustice protestors seek to speak out against. "Drivers hate to be inconvenienced when robust protests block streets. But driving isn't a right — it's a privilege. Protesting, on the other hand, and specifically protesting in the streets is a fundamental constitutional right."⁹ Gov. DeSantis' attempt to utilize a law-and-order platform to not only quell voices of dissent but to protect those who murder protestors, and to deny just compensation to victims, is an alarming assault on the basic rights of citizens to be free of torture or cruel, inhuman and degrading treatment.

IV. Universal Periodic Review Recommendations and Special Rapporteur E. Tendayi Achiume's June 2020 Statement

The Universal Periodic Review ("UPR") Recommendations for the U.S. and Special Rapporteur Tendayi Achiume's June 2020 statement both indicate that the U.S. needs a robust oversight and investigatory mechanism for law enforcement. The UPR Recommendations explicitly uplift the need to "enact policies to address racial justice within its police force",¹⁰ while Special Rapporteur Achiume highlights the "systemic racism in law enforcement in the United States,"¹¹ rooted in "legacies of colonialism and transatlantic slavery."¹²

The UN Committee on the Elimination of Racial Discrimination (CERD) issued a statement under its Early Warning and Urgent Procedures, where it noted "the announcement of police reforms by the local authorities in Minneapolis, as well as similar announcements by other local governments to redirect policing budget to social services,"¹³ echoing the familiar call during the uprisings to divest from policing and invest in Black and Brown communities. This idea, born out of a recognition of the harmful, racist, and militarized nature of policing in the United States as well as the hyper-inflation of most police budgets around the country, seeks to shift funding from local police budgets towards healthcare, housing, mental health services and other resources for communities. Data compiled through national databases show that 9 out of 10 calls to 9-1-1 are for nonviolent encounters. This is the reason that advocates for the defund movement such as Yale University Ph.D. candidate, Phillip McHarris and CoFounder of movement builder Blackbird, Thenjiwe McHarris argue that shifting funding to social services that can

⁸ Grace Hauck, *Cars have hit demonstrators 104 times since George Floyd protests began*, USA Today, Jul. 9, 2020 <https://www.usatoday.com/story/news/nation/2020/07/08/vehicle-ramming-attacks-66-us-since-may-27/5397700002/>

⁹ Lee Rowland & Vera Eidelman, *Where Protests Flourish, Anti-Protest Bills Follow*, ACLU, Feb. 17, 2017 <https://www.aclu.org/blog/free-speech/rights-protesters/where-protests-flourish-anti-protest-bills-follow?redirect=blog/speak-freely/where-protest-s-flourish-anti-protest-bills-follow>

¹⁰ US Human Rights Network UPR Task Force, *Re: U.S. participation in the third Universal Periodic Review of the United States*, US Human Rights Network, Feb. 9, 2021 https://2eb10dad-2dc6-4e35-8204-bfad7e9ec875.usrfiles.com/ugd/2eb10d_dbbab5b943444b97b35978786c1e0b7b.pdf

¹¹ E. Tendayi Achiume, *The UN Should Establish a Commission of Inquiry on Systemic Racism and Law Enforcement in the United States*, Just Security, Jun. 16, 2020 <https://www.justsecurity.org/70811/the-un-human-rights-council-should-establish-a-commission-of-inquiry-on-systemic-racism-and-law-enforcement-in-the-united-states/>

¹² *Id.*

¹³ Committee on the Elimination of Racial Discrimination, *Statement 1*, OHCHR, Jun. 12, 2020 <https://www.ohchr.org/Documents/HRBodies/CERD/earlywarning/statements/USA.PDF>

improve issues such as mental health, addiction, and homelessness is a better use of taxpayer money.¹⁴ Proponents want to replace law enforcement with community-led safety initiatives that focus on the root causes of substance abuse, crime and poverty. A 2018 report from the U.S. Commission on Human Rights found that school systems in predominantly Black and marginalized communities do not have access to the same public funding as white communities do, resulting in limited access to quality education and programs for students living in marginalized communities.¹⁵ Access to quality education and youth programs are among the most important community services required to raise minority communities out of poverty. Instead of acting upon the demands of communities most affected by police brutality and violence, Gov. DeSantis has chosen to seek political clout by silencing the voices of millions of Black and Brown people seeking to combat systemic discrimination.

The ability of citizens to decide their local government's spending priorities and, critically, to hold the police accountable, is inherent in the spirit of the UPR Recommendations, and Special Rapporteur Achiume's and CERD's statements. HB1, however, ignores calls for police accountability and instead emboldens police departments by penalizing cities that seek to reduce police budgets in favor of other social services. "Provisions in the bills that would prevent cities and counties from defunding the police reveal legislators' real motivation," said Vera Eidelman, a staff attorney at the American Civil Liberties Union's project on speech, privacy and technology.¹⁶ This bill, in severely restricting the ability of residents to inform and shape the spending priorities of their own local governments, does not allow for the police to be held accountable in any meaningful sense. Furthermore, it will likely perpetuate the status quo of racially inequitable distribution of community resources.

C. Conclusions

"HB1 does nothing for this state except obstruct the path to justice and directly infringe our civil and human rights. It attempts to paint what happened last summer as a random period of pointless violence. But the past is not a distant land, and that movement for Black lives is the same movement we see today. And if that is anything to go by, we know that we will triumph."

The words of Dream Defenders member Nushrat Nur are resonant here. We know that the voices, actions, and spirits of those striving for a more just society will prevail. We know that the efforts of Black and Brown communities are powerful, long-lasting, revolutionary and freeing for all members of society. The pattern of state retaliation against movements for justice — particularly Black-led movements — is as familiar as the set of brutal, systemically racist conditions that have necessitated these movements at every stage of the United States's history.

What can be different this time, after the mass demonstrations that took place after the tragic killing of George Floyd, is for the national and international community to take a strong stand against any efforts to quell movements for racial justice, equity and accountability. Measures that obstruct the ability of people to meaningfully participate in democracy and calls for justice — such as Florida's HB1 and the

¹⁴ Rashawn Ray, *What does 'defund the police' mean and does it have merit?*, FixGov, Jun. 19, 2020 <https://www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/>

¹⁵ Catherine E. Lhamon et. al, *Public Education Funding Inequity*, USCCR, Jan. 10, 2018 <https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf>

¹⁶ *Supra* note 6.

different flavors of anti-protest legislation around the country — must be called out and resisted. It is our responsibility as human rights defenders, as community members, as citizens who care for one another, to confront and speak out against the tactics used to hinder pursuits of justice. This is why we respectfully call your attention to this harmful development and emphasize the importance of a statement from your office calling out HB1 and similar, repressive anti-protest legislation in the United States. Your voice will bolster residents' ability to participate in our democracy and exercise their fundamental rights. Together, our voices will resound.

Further documentation is available as needed. We look forward to your response.

Sincerely,

Dream Defenders
Community Justice Project
Movement Law Lab
The Black Collective
Law for Black Lives

Dream Defenders are an organization of Black and Brown youth organizing towards a new vision for safety away from prisons.

Community Justice Project is a movement lawyering organization that supports grassroots organizing for human rights and racial justice across Florida.

Movement Law Lab is an organization dedicated to building a new generation of legal organizations with the know-how and expertise to use law to transform our world.

The Black Collective is a movement committed to promoting a shared agenda to elevate political consciousness and amplify the economic power of Black communities.

Law for Black Lives is a national community of radical lawyers and legal workers committed to transforming the law and building the power of organizing to defend, protect and advance Black Liberation across the globe.