



**Interactive Dialogue with the UN Special Rapporteur on the Rights to Freedom of Peaceful
Assembly and of Association
Statement by the American Civil Liberties Union
43rd Session of the UN Human Rights Council**

July 10, 2020

George Floyd's horrific murder on May 25 and the killings of other Black people have sparked protests in at least [140 cities](#) across the United States and in over [40 countries](#) around the world. The heartening public support for the Black Lives Matter movement (BLM) is forcing governments, businesses, academic institutions and civil society organizations to denounce and seriously address structural racism and white supremacy and push for sweeping changes including divestment from police departments.

In recent weeks, the ACLU and other groups have documented and brought [legal challenges](#) to end serious violations of the right to assemble in the context of BLM protests. Federal, state, and local governments have failed to protect First Amendment rights to protest and assemble and resorted to excessive and indiscriminate use of force, arrests, and attacks on protesters. Since May 26, there have been over [400 instances](#) of journalists being detained, assaulted, or otherwise prevented from performing their duties by police. Protesters have experienced injuries, and sometimes [death](#), from tear gas, pepper spray, rubber bullets, and other crowd control tactics used by the police. Over 10,000 protesters have been [arrested](#). People assembling in mass gatherings and exercising their First Amendment rights to protest are all too often met with militarized police force, unlawful arrests, rough physical handling, as well as mass surveillance by police, including the use of surveillance aircrafts and drones.

The United States has a history of suppressing protests, especially when protesters are expressing grievances about racial injustice. As the UN Special Rapporteur [found](#) during the visit to the United States in 2016, assemblies organized by Black people, Indigenous peoples, and other people of color are managed differently by law enforcement. Protesters of color are more often met with disproportionate force: police are more likely to be militarized and aggressive, Black people are detained longer after arrests; they face heavier charges, more intimidation, and more disrespect. The detailed recommendations that were made to the U.S. government by the former Special Rapporteur Maina Kiai remain largely unimplemented.

Protests in [Ferguson](#) (Missouri), near [Standing Rock](#) (North Dakota), and in communities across the United States again demonstrate how law enforcement's intimidation tactics and discriminatory practices have historically diminished rights to freedom of assembly as a legitimate means through which individuals, especially those belonging to marginalized groups, can express their views and demand change.

Accountability measures must be put in place to address police violence against protesters and journalists including a ban on the use of tear gas against mass gatherings, independent investigations of incidents of use of police force, and the de-militarization of police.

We strongly believe that law enforcement should play no role in First Amendment contexts, unless it is to protect and enable the exercise of our constitutional and human rights to protest and to gather with others to make our voices heard. Law enforcement should not use violence to control the crowd or silence those they disagree with.

Police response to protests and other mass assemblies should not involve militarized displays or mass violence by the government, and law enforcement should never deploy indiscriminate weapons, such as tear gas and stun grenades, on any mass gathering or assembly.

In addition to posing serious risks to people's health and safety, such weapons almost by definition violate our right to due process and will seldom, if ever, constitute the least restrictive means available to regulate unlawful conduct in the context of a protest or mass assembly.

During mass assemblies, just as they are at any other point, police officers are subject to the U.S. Constitution and must comply with U.S. treaty obligations including the International Covenant on Civil and Political Rights. That means the police cannot selectively enforce laws against protestors, use pepper spray or mace against protesters, arrest people without individualized probable cause, use excessive force, arrest protesters for criticizing them, or rely on illegal profiling factors like race or ethnicity. Instead, the most successful law enforcement approach to unlawful conduct at a mass assembly focuses on de-escalation, effective communication, and crowd management, not crowd control.

Ten years ago, the United States [led the effort](#) to establish the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Today, the United States is flagrantly violating fundamental freedoms in using militarized and deadly policing practices that have no place in a democratic society.

On June 19, the Human Rights Council adopted by consensus a [watered-down resolution](#) calling on the High Commissioner to prepare a report on systemic racism and violations of international human rights law against Black people and to contribute to accountability and redress for victims. The [resolution](#) also requested the High Commissioner "to examine government responses to antiracism peaceful protests, including the alleged use of excessive force against protesters, bystanders and journalists." We hope that the report will be the first step in a series of meaningful accountability measures to protect and facilitate Black Lives Matter and other protests in the United States and around the world.