

## Thematic Briefer: Freedom of Assembly During COVID-19

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### Introduction

Throughout history, the role of protest has remained significant in any democratic society. It is a means of expression through which collective voices are raised to demand democracy and good governance. Unfortunately, many governments in Asia globally suppressed, controlled, or otherwise discouraged protests during the COVID-19 pandemic.

Article 21 of the International Covenant on Civil and Political Rights (ICCPR) protects the right to peaceful assembly.<sup>1</sup> This right facilitates participative governance by allowing individuals to mobilize their communities over shared ideals and goals. This includes organizing and participating in protests to hold governments accountable for protecting their peoples' rights and interests. Protection and promotion of this right can also help realize other socio-economic and civil-political rights: protests advocating for better health care systems, stronger educational institutions, and safer housing conditions can further the rights to physical and mental health, education, and adequate standard of living, respectively. States are obligated to protect and facilitate their peoples' right to exercise the right to peaceful assembly.<sup>2</sup> This includes adopting and implementing a legal and institutional framework that protects assemblies and refraining from undue interference with assemblies. Because engaging in protest is a form of expression, protection of the right to freedom of expression is also integral to the enjoyment of the right to peaceful assembly.<sup>3</sup>

In unprecedented times like the COVID-19 pandemic, the right to peaceful assembly has special significance. Governments often activate or expand wider powers and control over their populations during public emergencies. Globally, COVID-19 prompted an increase in autocratic measures and suppression of civil society.<sup>4</sup> Protest, as a means of dissent, became even more important to protect democracy and hold the government accountable for the proper exercise of its power. Despite government restrictions on

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<sup>1</sup> "Peaceful" assemblies are those where participants do not exercise physical force against others that is likely to result in injury or death, or serious damage to property. Human Rights Committee, "General comment No. 37 (2020) on the right to peaceful assembly (article 21)" (September 2020), CCPR/C/GC/37, available at [https://documents-dds-https://tbineternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/37&Lang=en](https://documents-dds-https://tbineternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/37&Lang=en), at para. 15.

<sup>2</sup> *Id.*, at Introduction.

<sup>3</sup> Human Rights Committee, "General Comment No. 34: Article 19: Freedoms of opinion and expression" (September 2011), available at <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, Section III.

<sup>4</sup> ICNL's COVID-19 Civic Freedom Tracker found that states in the Asia-Pacific adopted 349 new measures that impacted civic space during the pandemic. Out of these, 143 measures were executive measures that impacted the freedom of assembly through actions such as prohibiting gatherings, imposing curfews, and introducing surveillance measures.

civic freedoms, people across the globe continued to protest to express their dissent against authoritarian regimes and to hold their governments accountable for their actions.

#### PROTESTS ACROSS ASIA-PACIFIC DURING COVID-19

Most of the protests during COVID-19 were against governments' ineffective response to the public health emergency. The government in China adopted a [zero-COVID policy](#) which imposed strict isolation measures even when the reported number of cases did not appear to warrant such a response. COVID-related lockdowns subsequently [prevented](#) fire trucks from reaching a building on fire, and ten people died as a result. This particular incident sparked widespread protests against the policy in [China](#). A woman also protested China's zero-COVID policy outside the Chinese Embassy in [Singapore](#). The protests across China and globally [pressured authorities](#) to retract the policy. While they started as anti-confinement protests, the protests snowballed into demands for freedom and democracy. These protests were uniquely important in a country where the government severely restricts civic freedoms, demonstrating a deep-seated frustration towards the government's approach to the pandemic and more broadly, human rights.

Likewise, in [Thailand](#), when the country faced its worst wave of COVID-19, protesters took to the streets against the government's management of COVID. These protests swelled to become pro-democracy protests, with participants [demanding](#) reform of the monarchy. In [Malaysia](#), protesters gathered around the Parliament in a socially-distanced protest to call for its reopening and ending of the state of emergency. In [India](#), people pasted posters on public walls to express their anger over vaccine shortages. In [Australia](#), many people were on the streets over the government's vaccine mandate.

Apart from COVID-related grievances, people also took to the street for other causes:

- a. Economic causes: [Sri Lanka](#) faced a financial emergency during COVID-19 leading to massive inflation which rendered even basic goods unaffordable. People protested against the ruling government party's handling of the inflation crisis and demanded the resignation of their government leaders. In [Cambodia](#), the Labor Rights Supported Union of Khmer Employees of Naga World (LRSU) went on strike in December 2021 for the reinstatement of workers who were laid off earlier in the year. In [South Korea](#), hundreds of workers protested for better working conditions. In [Indonesia](#), thousands of people came to protest against the Omnibus Law, which reduced wages and benefits while increasing work hours, among other issues.
- b. Democratic causes: In [Thailand](#), people protested for reform of the monarchy. [Article 112 of Thailand's criminal code](#) says anyone who "defames, insults or threatens the king, the queen, the heir-apparent or the regent" will be punished

with a jail term between three and 15 years. In [Hong Kong](#), protests against the Extradition Bill, which sought to send suspected or accused criminals to China, continued even after the outbreak of COVID-19. In [Myanmar](#), the military seized power from the civilian government in a February 2021 coup, leading to a series of massive protests throughout the country.

- c. Protest by healthcare workers: COVID placed immense pressure on healthcare workers. Armed Conflict Location & Event Data (ACLED) conducted a study that provides a global overview of healthcare workers' protests during COVID-19, finding that the most common reasons for these protests were dissatisfaction with working conditions and remuneration (Sorcha A. et al, [2022](#)). The same trend was reflected around Asia-Pacific. In the [Philippines](#), healthcare workers protested against unpaid benefits. In [Australia](#), many nurses went on strike to demand a better nurse-to-patient ratio and hike in their salaries. In [India](#), healthcare workers spoke about their increased risk of COVID-19 and the government's failure to provide them with proper equipment and accommodation facilities.

Despite the challenge of staying safe during COVID-19, people found unique ways to protest to express their collective interests without endangering the community's health. In [Malaysia](#), a protest against the COVID-19 measures was carried out by vehicle convoys that drove across several cities to protest. Protesters hung black flags from their vehicles to symbolize their demand for reopening Parliament and ending the state of emergency.<sup>5</sup> [Thailand](#) also saw a similar "car mob" protest against the handling of the COVID-19 pandemic. In [Singapore](#), people conducted "solo protests" to voice their opinions on various issues like climate change and the Chinese government's zero-tolerance COVID policy.

#### GOVERNMENT RESPONSE TO PROTEST DURING COVID-19

The outbreak of COVID-19 posed an unprecedented risk to public health. International human rights law allows governments to restrict the right to freedom of peaceful assembly for several legitimate aims, including the protection of public health. Restrictions on this right are only permissible if they are clearly written into law ("legality"), further a legitimate aim ("legitimacy"), and are the least intrusive means to further the legitimate aim ("proportionality").<sup>6</sup>

Many of the restrictions on assemblies adopted by governments during the pandemic failed to comply with this three-part test. While most COVID-related restrictions on assembly met both the legality and legitimacy tests because they were enacted through formal legal mechanisms (including through emergency powers granted under law),

<sup>5</sup> <https://www.article19.org/resources/malaysia-protesters-government-critics-face-new-wave-harassment/>

<sup>6</sup> General Comment No. 37, *supra* note 2, at Section IV.

clearly articulated the time or place restrictions or prohibitions on assemblies, and were enacted to protect public health, these measures tended to fail the proportionality test.

For example, the United Nations Human Rights Committee emphasizes that states should only prohibit specific assemblies as a measure of last resort. Nevertheless, several countries banned all protests during the pandemic. In [India](#), the government relied upon section 144 of the Criminal Procedure Code to ban any kind of assembly. The government cited this section to force protesters to [end their 600 days of protest](#) against the amendment of the Citizenship Act and to deny permission to [farmers](#) to protest against the controversial Farm Laws in Delhi. [Sri Lanka](#) also used a state of emergency to ban protests against the severe economic crisis. Similarly, [Thailand](#) used its COVID-19 emergency decree to ban protests. The authorities in [Hong Kong](#) blocked all forms of protest including the public commemoration of the anniversary of the 1989 Tiananmen Square Massacre. “Blanket bans” or general prohibitions of protests are a disproportionate response to protecting public health because they do not consider the specific risks for each unique protest, and therefore do not weigh less intrusive alternatives to outright bans, such as requiring protesters to social-distance and wear masks.

Apart from imposing blanket bans, states detained persons who continued to protest. Law enforcement detained many anti-coup protesters in [Myanmar](#), including the former leader, [Aung San Suu Kyi](#), for defying COVID regulations. In [Australia](#) and [New Zealand](#), law enforcement detained scores of anti-lockdown protesters in 2021, also for violating COVID-19 regulations. Similar detentions also took place in [Thailand](#), [India](#), [China](#), and [Sri Lanka](#). Detention is not a proportionate response to protect public health; a less intrusive means to promote public health during assemblies could be, again, to require social distancing and mask wearing, and if protesters refuse, to peacefully disband the protest.

Some measures to restrict protest also failed the legitimacy test. For example, several governments extended the blanket ban on physical protests to demonstrations where there was limited physical engagement between protesters, such as the solo protests in [Singapore](#), and the car protests in [Malaysia](#) and [Thailand](#). Banning these protests did not further the protection of public health since there was minimal risk of spreading COVID-19 when people were socially distanced or protesting alone. Additionally, the uneven application of blanket bans on protests, such as in Hong Kong, where the police enforced COVID-related gathering restrictions against pro-democracy protests but not against people gathered at packed bars, suggested that the aim of these bans was to silence protest, which is not a legitimate aim under international law. Finally, detaining protesters does not actually further the legitimate aim of protecting public health. Detention increases the risk of spread of COVID-19: in [Myanmar](#), the detention of thousands of anti-coup protesters resulted in an increase in COVID-19 cases in jail.

## Conclusion

The right to peacefully assemble is a key part in any democratic governance. It becomes even more significant during an emergency like the COVID-19 pandemic when governments can exercise wider powers. Although several governments in Asia restricted assembly rights beyond parameters allowed under international law, people in the region still mobilized to express their dissatisfaction against various issues and hold governments accountable to their obligations.

Civil society must continue to promote protections of the right to freedom of peaceful assembly to ensure that people advocate for their needs in emergency situations.