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THE RIGHT TO DISSENT: INTERNATIONAL LAW GUARANTEES

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Approved unanimously by the UN General Assembly on December 10, 1948.

✘ Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

✘ Article 20

Everyone has the right to freedom of peaceful assembly and association.

✘ Article 21

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

TREATIES GUARANTEEING FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY

- ✘ International Covenant on Civil and Political Rights
- ✘ American Declaration on the Rights and Duties of Man
- ✘ American Convention on Human Rights
- ✘ European Convention on Human Rights
- ✘ African (Banjul) Charter on Human and Peoples' Rights.
- ✘ These treaties have been interpreted by:
 - ✘ Inter-American Court of Human Rights
 - ✘ Inter-American Commission on Human Rights
 - ✘ European Court of Human Rights
 - ✘ African Human Rights Commission
 - ✘ African Court on Human and Peoples' Rights
 - ✘ UN Human Rights Committee

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

✘ Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

✘ Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

✘ Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN

- ✘ **Article IV.** Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.
- ✘ **Article XXI.** Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

RESTRICTIONS ON EXPRESSION AND ASSEMBLY

- ✘ **Freedom of expression may be subject to certain restrictions, namely:**
 - To respect the rights and reputation of others; and,
 - To protect national security, public order, health or morals, provided that such restrictions are: prescribed by law and are reasonable.

- ✘ **Some examples of restrictions:** hate speech, extortion, counselling the commission of a criminal offence, intentionally causing harm;
e.g. falsely crying fire in a crowded space.

- ✘ **Restrictions on the right to peaceful assembly are basically the same:**
 - Those necessary to preserve national security of public safety, public order, health or morals or,
 - Protect the rights of others

RESTRICTIONS ON FREEDOM OF EXPRESSION

- × **The only restrictions to freedom of expression are those that are:**
 - Necessary to preserve some other right or a pressing and substantial public interest,
 - Prescribed by law,
 - As narrow as possible to achieve the competing public goal, and,
 - Proportional to the need to preserve another public interest, Both the purpose and the effect must be proportional, and,
 - Consistent with international standards.

- × **Some principles regarding restrictions:**
 - the onus is on the state to establish the necessity and legality of such restrictions.
 - Necessary means something beyond desirable, reasonable, useful.
 - A pressing social need must be established. i.e. the objectives sought must outweigh the right restricted.

RESTRICTIONS ON THE FREEDOM OF PEACEFUL OF ASSEMBLY

× Peaceful

- An assembly should be considered peaceful if the intention of organizers is peaceful and includes conduct that is annoying, offensive and temporarily hinders, impedes or obstructs the activities of others.
- The assembly right does not cease because of the sporadic violence or other punishable acts committed by others.

× Notification and authorization

- A requirement of prior authorization is considered a violation of assembly rights
- Only those committing criminal offences can be arrested.
- Prior notification requirement is to allow state officials to facilitate the assembly and to take measures to protect public safety by rerouting traffic providing medical care, and should not be required more than 48 hours in advance.
- States must not unduly interfere by imposing blanket time or location requirements.
- Spontaneous assemblies should be exempt from notice and failure to give notice must not result in punishment, civil or criminal.
- There must be a presumption that anything not expressly forbidden is allowed

× Police Role and Conduct

- Role of police is to facilitate peaceful assembly and to protect demonstrators.
- State must have operating plans to facilitate mass gatherings that include rerouting traffic, protecting participants, facilitating dissent activities.
- States should have a code of conduct for law enforcement regarding crowd control and effective procedures for oversight and accountability of that conduct.
- Excessive use of force against assembly participants should be investigated and prosecuted.

× Use of Public Space

- The use of public space for assemblies is as legitimate as commercial activity or movement of people or traffic.