Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
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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 issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 41/12, 37/8, 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Summary Offences and Other Legislation Amendment Act 2019** that was adopted by the Queensland Parliament on 24 October 2019, which contains a number of provisions that unduly restrict the right to freedom of peaceful assembly and to freedom of expression.

Similar concerns were raised by Special Rapporteurs in previous communications sent to Australia in 2014 (AUS 3/2014) and 2016 (AUS 1/2016), when they urged the state governments of Tasmania and Western Australia, respectively, not to adopt legislation which would unduly restrict the right to freedom of peaceful assembly and the right to freedom of opinion and expression by criminalising legitimate and lawful protest. We acknowledge and thank the government of Australia for the replies received. The reply to AUS 3/2014 highlighted the changes which had been made to the bill in Tasmania during the interim period, demonstrating how they addressed the concerns raised, such as by limiting the scope of application and removing mandatory penalties and criminal records for protesters found to have infringed the provisions of the bill. Communication 1/2016 expressed concerns regarding a proposed bill in Western Australia which sought to criminalise protesters using lock-on devices with the intention of obstructing lawful activities. The government's reply explains the rationale for the proposed bill but fails to acknowledge the disproportionate nature of the penalties proposed and the chilling deterrent effect they would have on citizens wishing to engage in peaceful protest of this kind. The bill was subsequently dropped following a change of government in Western Australia.

Similar concerns were further raised in the report by the Special Rapporteur on the situation of human rights defenders following his country visit to Australia in October 2016 (A/HRC/37/51/Add.3, para. 19).

According to the information received:

On 19 September 2019, the government of Queensland introduced the Summary Offences and Other Legislation Amendment Bill 2019 to the State Parliament. The Queensland Premier expedited the usual legislative process, leaving little time for public consultation and parliamentary scrutiny of the Bill.

The Act adopted provides police with new powers to search people and their vehicles without a warrant when there is a suspicion that they have in their possession a "dangerous attachment device" that has been used, or is to be used, to disrupt a relevant lawful activity. The Act also allows police to seize or disable any such device. The Act provides for prison sentences of up to two years and fines of up to 50 units (currently 6,672.5 Australian dollars), for using a dangerous attachment device to "unreasonably interfere with the ordinary operation of transport infrastructure, unless the person has a reasonable excuse" (Clause 14C(1)), and – with the same "reasonable excuse caveat" - up to one year or 20 penalty units for using such a device to "(a) stop a person from entering or leaving a place of business; (b) cause a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person (14C(2)).

Clause 14B(1) of the Act defines an attachment device as a ***dangerous attachment device*** if it

(a) reasonably appears to be constructed or modified to cause injury to a person who attempts to interfere with the device; or

(b) reasonably appears to be constructed or modified to cause injury to a person if another person interferes with the device; or

(c) incorporates a dangerous substance or thing.

The Act aims to prevent protesters from locking themselves onto equipment, infrastructure and other objects in order to obstruct lawful activities. However, civil society organisations have expressed concern that the Act prioritizes business interests over the defence of land and environment rights that protesters may pursue. Furthermore, the Act is potentially contrary to the provisions of the Human Rights Act (Qld) passed by the Queensland Parliament on 27 February 2019, which reaffirms protection for *inter alia* the right to free expression and peaceful assembly.

We are concerned that the Act could be used to unduly restrict the right to freedom of peaceful assembly, guaranteed in article 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Australia on 13 August 1980. We recall that Article 50 of the ICCPR provides that the Covenant provisions apply in all parts of federal states without any limitations or exception. Article 21 of the ICCPR provides that

"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."

We are seriously concerned that the Act allows for the criminalization of peaceful protests that may entail blocking access to roads or buildings; acts of civil disobedience; and non-violent direct action. As outlined above, clauses 14C(1) and 14C(2) criminalize using a "dangerous attachment device" to "unreasonably interfere with the ordinary operation of transport infrastructure, unless the person has a reasonable excuse" or to "(a) stop a person from entering or leaving a place of business; (b) cause a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person" unless the person has "a reasonable excuse". The unclear definition of what might constitute "unreasonable interference" or a "reasonable excuse" is a cause for concern in that it is excessively broad and open to very divergent interpretations. The grounds for determining whether an attachment device should be considered dangerous are similarly broad, and fail to recognise that attachment or 'lock-on' devices have been safely removed in the course of peaceful protests for many years.

We are mindful that the utilisation of attachment devices may in certain cases provoke legitimate concerns about public or personal safety. However, the Act allows for such a general restriction on their use that it is inherently disproportionate and not precise enough to allow for the consideration of specific situations. Absolute or total prohibitions, whether on the exercise of the right in general or on the exercise of the right in certain places and at certain times, are inherently disproportionate, as they exclude consideration of special circumstances specific to each meeting (A/HRC/23/39, para. 63).

While police must protect the safety of protesters, first responders and bystanders during a protest, measures taken under that guise should not result in the criminalisation of individuals taking part in peaceful assemblies. Further serious concern is expressed that the mandatory and disproportionate penalties could have a deterrent effect on the legitimate exercise of the right to peaceful assembly and the right to freedom of expression, silencing and punishing human rights defenders and any dissenters that hinder, obstruct or prevent a lawful activity.

In their joint report on the proper management of assemblies (A/HRC/31/66), the Special Rapporteur on the rights to freedom of peaceful assembly and of association, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, clarified that "A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance. (para. 32).

We would also like to express our concern about the short time period allocated for scrutiny and adoption of the above-mentioned Act, which curtailed prior consultation. Consultations with civil society, national and international experts and the public on complex issues that impact the exercise of human rights are essential. The seriousness of

the consequences of a restriction on freedom of expression and freedom of peaceful assembly requires thorough and complete examination. These consultations provide an important source of information allowing authorities to take into account the effects that legislation could have on the enjoyment of human rights. We would like to remind your Excellency's Government that the Human Rights Committee recommended to Australia to "strengthen its legislative scrutiny processes with a view to ensuring that no bills are adopted before the conclusion of a meaningful and well-informed review of their compatibility with the Covenant." (CCPR/C/AUS/CO/6, paras. 11-12.)

Finally, we would like to mention that in his 2016 mission report to Australia, the Special Rapporteur on the situation of human rights defenders raised concerns about "the trend of introducing constraints by state and territory governments on the exercise of the right to freedom of assembly, in particular through "anti-protest legislation". Following the introduction of such legislation, "peaceful civil disobedience and non-violent direct action could be characterized as unlawful disruption". The Special Rapporteur expressed further concerns about the apparent prioritization of business interests over the fundamental right to freedom of assembly. He recalled that human rights defenders have the right to protect all human rights, "regardless of whether their peaceful activities are seen by some as frustrating business projects." The Special Rapporteur recommended your Excellency's Government to "[r]eview and revoke laws that unduly restrict the right to free and peaceful assembly." (A/HRC/37/51/Add.3, paras. 43, 45, 107).

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 information and/or comment(s) you may have on the above-mentioned concerns.

2. Please provide information on measures taken to ensure the compliance of the Act with Australia's obligations under international human rights law and standards, particularly with international law and standards related to the rights to freedom of peaceful assembly and freedom of expression.

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 within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge your Excellency's Government to continue its cooperation with the mandates of the Special Procedures of the Human Rights Council, to take into account the concerns raised, and to avail of any technical assistance that Special Procedures may be able to provide in order to ensure the full promotion and protection of human rights in Australia.

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye
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Michel Forst
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