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**Submissions to General Comment No. 37 on Article 21 (the Right of Peaceful Assembly)**

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**Introduction**

1. These submissions are made on behalf of ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), an independent human rights organisation that works around the world to protect and promote the right to freedom of expression and right to freedom of information. ARTICLE 19 welcomes the decision of the UN Human Rights Committee (the Committee) at its 124th Session in 2018 to develop a General Comment on Article 21 of the International Covenant on Civil and Political Rights (ICCPR) on the right to peaceful assembly.
2. Our submissions draw on ARTICLE 19 experience and expertise advocating to protect the rights to freedom of expression and freedom of peaceful assembly and association. This includes the policy work – culminating in our principle policy position in this field, “The Right to Protest: Principles on the Protection of Human Rights in Protests” (the Protest Principles),[[1]](#footnote-2) legal analyses of laws related to the right of assembly, support to progressive jurisprudence at national and regional levels (including at the European Court of Human Rights), and work with human rights defenders and grassroots organisations involved in protests.
3. The submissions are structured to respond to the specific questions raised by the Rapporteur for the General Comment in the “note by the rapporteur.”[[2]](#footnote-3) We organise these as follows:
	* Section I deals with general principles, including on understanding the scope of the right to freedom of peaceful assembly, limitations, states of emergency, and non-discrimination;
	* Section II addresses the obligation to respect the right of peaceful assembly;
	* Section III the obligation to protect the right of peaceful assembly;
	* Section IV the obligation to fulfil the right of peaceful assembly.
4. In our view, this approach captures the States’ legal obligations in a way that is comprehensive and logical. Considerations related to interpreting the right of peaceful assembly in the digital age, in particular in relation to private actors, are integrated throughout the submission.
5. ARTICLE 19’s work at the intersection of the right to freedom of expression and the right of peaceful assembly has led us to a particular focus on human rights in protests. We understand protests to mean “the individual or collective expression of oppositional, dissenting, reactive or responsive views, values or interests”,[[3]](#footnote-4) and thus, in instances of collective expression, both Articles 19 and 21 of the ICCPR are among the human rights engaged. By their associative nature, assemblies will frequently engage the right to freedom of association also, under Article 22 of the ICCPR. While Article 21 may be engaged in situations that are not protests, the number of human rights violations we witness in protests indicates that this ought to be a priority area to develop guidance for States Parties on their obligations.
6. **General Principles**

**Value of the right of peaceful assembly**[[4]](#footnote-5)

1. The right of peaceful assembly is essential for collective expression, and in particular for protests, and thus plays an important part in the civil, political, economic, social and cultural life of all societies.
2. Historically, peaceful assemblies have often inspired positive social change and improved protection of human rights, and they continue to help define and protect civic space in all parts of the world. They encourage the development of an engaged and informed citizenry and strengthen representative democracy by enabling direct participation in public affairs. They enable individuals and groups to express dissent and grievances, to share views and opinions, to expose flaws in governance and to publicly demand that the authorities and other powerful entities rectify problems and are accountable for their actions. This is especially important for those whose interests are otherwise poorly represented or marginalised.
3. As the High Commissioner for Human Rights observed in her global report of March 2019:

*Even in prosperous States, people feel excluded from the benefits of development and deprived of economic and social rights – leading to alienation, unrest, and sometimes violence.  In recent months, we have seen people across the world take to the streets to protest inequalities and deteriorating economic and social conditions.  Their demands call for respectful dialogue and genuine reform. And yet, in several cases, they are being met with violent and excessive use of force; arbitrary detentions; torture; and even alleged summary or extra-judicial killings*.[[5]](#footnote-6)

1. The value of peaceful assembly to sustainable development, in particular Agenda 2030, has also be stressed by the UN Special Rapporteur on the right to freedom of peaceful assembly and association, who has noted how the rights ensure transparency and inclusiveness, create an enabling environment for civil society, ensure accountability, create partnerships with civil society, and support labour rights.[[6]](#footnote-7)
2. The right of peaceful assembly also functions as a safety valve in a democratic society. Where other forms of representation and participation are not functioning, or are not sufficiently direct and effective, protests serve as an early warning system. They can indicate that the government is not meeting the needs of the public, or that there are other challenges the government is not aware of, and this can facilitate a change in government policy or action. The right of peaceful assembly should therefore be seen as essential in a democracy as the right to participate in public affairs, including the right to vote.
3. Yet, as the High Commissioner for Human Rights has identified, governments around the world too often treat protests as either an inconvenience to be controlled or a threat to be extinguished.
4. Digital technologies offer new opportunities and challenges to protests; they are now used both as a crucial medium for enabling peaceful assemblies to take place and as a platform for collective expression that may be considered as “online” assemblies. Technological advancements have also significantly enhanced the ability of governments to infringe and potentially violate human rights in protests.
5. The value of the right of peaceful assembly in a democratic society thus requires that Article 21 of the ICCPR be given the maximum scope of protection, and that any limitations on the right are exceptional in nature.

**Understanding “peaceful”**[[7]](#footnote-8)

1. Article 21 is the only right in the ICCPR framed with the qualifier “peaceful”, implying that assemblies that are not “peaceful” do not fall within the scope of protection. In ARTICLE 19’s experience, the term “peaceful”, which is somewhat ambiguous from a legal perspective, is prone to narrow interpretation by States who wish to limit the scope of the right of peaceful assembly. While most regional human rights instruments contain similar qualifiers, an exception is the African Charter on Human and Peoples’ Rights, which guarantees in Article 11 “the right to assemble freely” without reference to the term “peaceful”.
2. In our policy position, The Protest Principles, ARTICLE 19 equates the term “peaceful” with “non-violent”, narrowing the potential for this qualifier to be interpreted too restrictively, and to give human rights in peaceful assemblies the widest possible protection:

*1.2 As for the terms peaceful or non-violent:*

*a) These should always be interpreted broadly and should exclude only those instances in which there is clear and convincing evidence of intent by protesters to engage in violence against a person or property, and a high probability that they will do so;*

*b) These should include the use of self-defence (of oneself or another) by protesters against unlawful acts, but the form of self-defence should be no more than is reasonably necessary in the circumstances, as the individual genuinely believed them to be;*

*c) The assessment of whether protest is peaceful should take into account the fact that isolated or sporadic violence or other unlawful acts committed by others do not deprive individuals of the right to protection, as long as they remain peaceful in their own intentions or behaviour;*

*d) States should acknowledge that whenever a protest ended in violence, it was due to the state’s failure to effectively facilitate peaceful protest, prevent violence and engage in conflict resolution with those who were likely or intending to engage in violence.[[8]](#footnote-9)*

1. What is “peaceful” versus “not peaceful” should be considered on a case by case basis, according to contextual factors focused on determining (i) the intent of organisers and participants to an assembly to engage in violence, and (ii) the likelihood of significant violence and/or property damage occurring. This should be considered as a threshold along a scale, rather than as an analogue determination.[[9]](#footnote-10) That threshold should be high so as to afford maximum protection to the right of peaceful assembly, bearing in mind that all conduct within the scope of protection may still be subject to limitations in accordance with the limitation clause of Article 21.
2. Determining violent intent should be decisive, and in the absence of compelling evidence an assembly should be deemed peaceful.[[10]](#footnote-11) As with the right to freedom of expression, the right to peaceful assembly must include the right to annoy or offend people who are opposed to the ideas or claims that an assembly is seeking to promote,[[11]](#footnote-12) as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties.[[12]](#footnote-13) This also requires interpreting “peaceful” to include acts that may be unlawful but nevertheless non-violent. For example, protests that employ tactics and strategies of non-violent direct action or civil disobedience may technically and intentionally violate the law, but should still be understood as the exercise of freedom of peaceful assembly.[[13]](#footnote-14) Organising for or possessing protective equipment (including helmets or gas masks) for self-defence against counter-protesters or against the potential for authorities’ use of force, should not necessarily be regarded as preparation to engage in violence. Similarly, for particular communities carrying weapons may be of a symbolic importance and have an expressive value, and not necessarily indicate an intention to engage in violence. Likewise, taking measures to conceal one’s identity in an assembly (e.g. by wearing a mask) should not be interpreted as an intent to engage in violence.
3. Even where individual participants in an assembly engage in acts of violence or property damage, this should not be enough to categorize the assembly as “not peaceful” and therefore deprive all participants their right of peaceful assembly.[[14]](#footnote-15) The possibility of persons deliberately sabotaging peaceful assemblies through acts of violence must also be considered in this context.
4. The term “peaceful” should only be interpreted to restrict the permissible subject-matter of ideas or opinions expressed during an assembly in exceptional circumstances. The right to freedom of expression is not qualified by the term “peaceful”, and it would therefore be inconsistent with Article 19 of the ICCPR to interpret Article 21 in a way to permit limitations that do not meet the requirements of Article 19(3) of the ICCPR. Assemblies that include the advocacy of hatred that incites violence or discrimination, or which intimidates or constitutes serious harassment against individuals, may be limited through reliance on the limitation clause of Article 21, and consistently with Articles 19(3) and 20(2) of the ICCPR as applicable.

**Understanding “assembly”, including in private spaces and online**[[15]](#footnote-16)

1. The Committee should define “assembly” broadly, to reflect the increasingly creative ways in which people collectively exercise their rights to freedom of expression, in particular online in the digital age. We suggest that an assembly should mean any collective act of expression between two or more people with proximate unity of purpose, time, and place. The presumption in favour of assemblies requires that the term “assembly” be interpreted as broadly as possible.
2. Purpose, time, and place, are integral to the collective expressive and associational value of assemblies, in particular protests. These are factors that are not only relevant to identifying when the right of peaceful assembly is engaged, but also are key to ensuring that persons have the freedom to choose the location of their assemblies, the form and manner of their assemblies, and the content or cause of their assemblies.[[16]](#footnote-17) These three “unities” should be considered together when examining if conduct qualifies as an “assembly” for the purpose of Article 21 ICCPR – with each unity not necessarily carrying the same weight. Some assemblies may have greater unity of purpose, for example, than time or place, in particular where they take place online. The definition requires a case-by-case assessment and should not be interpreted restrictively.
3. Two or more persons
4. Requiring an assembly to involve two or more persons is necessary to distinguish the right under Article 21 ICCPR from the right to freedom of expression under Article 19, and also to convey the associational value inherent to the right of peaceful assembly.
5. This should not be interpreted to diminish the value of or afford lower protection to individual acts of protest. Acts of individual expression, especially where they take on a more physical form, may engage many of the same considerations as collective forms of expression. The States’ obligations for facilitating and, where applicable, responding to such expression, may be very similar as for collective acts of expression, but without engaging Article 21 of the ICCPR.
6. Unity of time
7. In addition to the number of participants, an assembly implies multiple expressive acts taking place close in time, though not necessary with exact contemporaneity. A group of individuals engaging in a series of expressions which closely follow each other may still be considered an assembly, for example.
8. In relation to the duration of an assembly, we advise the term “temporary” be avoided in any definition, since this may be abused to deny protection to assemblies of extended duration, including where the duration of an assembly is intrinsic to its expressive purpose. While UN experts have employed the term “temporary” in relation to assemblies, they have also stressed that this should not diminish protections for assemblies that take on a form of extended duration, such as sit-ins and occupations.[[17]](#footnote-18) The Committee has itself raised concerns on time-based limitations to assemblies that prevent protests of extended duration.[[18]](#footnote-19) Avoiding the term “temporary” in any definition would not preclude States from imposing time limitations on assemblies in line with the limitations clause of Article 21 ICCPR.[[19]](#footnote-20)
9. While an assembly may be defined by reference to the timeframe in which it manifests, the Committee should be clear that the right to freedom of assembly is engaged during acts of preparation for an assembly, including promoting information on an assembly, in addition to during an assembly, as well as following it, where persons may still be targeted for their participation or for sharing further commentary on the assembly, including authorities’ responses to the assembly.[[20]](#footnote-21)
10. Unity of purpose
11. A collective act of expression implies that participants share a common expressive purpose. Understandings of “collective expression” should include all three facets of the right to freedom of expression, and therefore encompass the right to collectively seek, receive, or impart information or ideas. Any definition of assembly should not focus only on the imparting of information or ideas, or be restricted by reference to any particular public audience - indeed, people may join an assembly primarily to be in the audience, to seek and receive the information or ideas promised at an assembly.
12. Unity of place, encompassing private and online spaces
13. An assembly may take place in any location, physical or virtual, whether that space is public, private, or quasi-public (i.e. privately owned, but functionally public). In the digital age, at a time when offline and online protests are increasingly creative, any definition of assembly must not be tied to limited understandings of physical (public) space.
14. A textual reading of Article 21 of the ICCPR justifies a broad understanding of the relationship between assemblies and space – the text itself does not reference or distinguish between spaces that are privately or publicly owned, or imply the necessity of physical presence of individuals together in one place.
15. The Committee has itself raised concerns at violations of the right to freedom of peaceful assembly in relation to gatherings at private venues.[[21]](#footnote-22) UN experts have opted for this more expansive approach, recognising the right of peaceful assembly can be engaged in public or private places, including online.[[22]](#footnote-23) Through UN Human Rights Council resolutions, States have expressly endorsed this approach in relation to online assemblies.[[23]](#footnote-24)
16. At the regional and national levels, assemblies have at times been defined by reference to public space,[[24]](#footnote-25) though the European Court of Human Rights has recognised the right of peaceful assembly may be engaged in privately owned premises that are functionally public.[[25]](#footnote-26) This distinction has led to the term “quasi-public space”, to reflect an increasing trend in many parts of the world for space that was previously publicly owned, and still frequented by the public, to fall into private ownership. As UN special procedures have recognised:

*The trend towards the privatisation of public places, such as shopping malls, pedestrian precincts and squares, means that assemblies commonly occur on property owned by business enterprises, sometimes referred to as privately owned public space. While private landowners generally have the right to determine who may access their property, the rights related to assembly may require positive measures of protection even in the sphere of relations between individuals.*[[26]](#footnote-27)

1. UN special procedures have connected this trend of privatisation to an increase in the use of strategic lawsuits against public participation (SLAPPs), as well as abuses against rights-holders by private security.[[27]](#footnote-28) Recognizing that the right of peaceful assembly is engaged in private spaces, including those that are functionally public, is essential if international human rights law is going to be an effective tool to push back against limitations on protest in societies where physical space is increasingly owned by business enterprises.
2. To recognize that the right of peaceful assembly may be engaged in private spaces, including against the will of persons with property interests, does not mean that property owners cannot ever assert their interests to exclude persons exercising their peaceful assembly rights. Rather, the assertion of those property interests may be considered an infringement of assembly rights, and would need to be justified in accordance with the limitations clause of Article 21 ICCPR (i.e. property interests should not be considered absolute, in the same way the right of peaceful assembly is not absolute). Where privately-owned property serves a public function, or where privately-owned property is the only venue within sight and sound of an assembly’s intended audience, more weight should be given to the exercise of the right of peaceful assembly against another’s property interests.
3. The operation of the internet depends upon platforms and a communications infrastructure that are largely privately owned. Recognising that the right of peaceful assembly can be engaged in privately owned spaces is therefore essential to recognizing any online dimension of this right.[[28]](#footnote-29) ARTICLE 19 advocates that the Internet should be considered a quasi-public (i.e. privately owned but functionally public) space for the exercise of rights.[[29]](#footnote-30) Where the owner of an infrastructure or platform holds an effective monopoly, i.e. there are no or few alternative venues to achieve the same communicative impact, this should weigh against their property interests (including as asserted through their terms of service or community standards) and in favour of the right of peaceful assembly. By analogy, an Internet platform that holds a monopoly over particular communications is similarly situated to a privately-owned shopping mall in a town-centre that otherwise has no equivalent public space, except Internet platforms often have as their business model the provision of space for expressive purposes.
4. Two dimensions of the right of peaceful assembly should be recognized when it is exercised online: first, communications technologies, including the internet, should be recognised as a medium for organizing protests and/or for contemporaneous commentary on assemblies; and second, these technologies must be recognised as a venue for “virtual” assemblies, including forms of online civil disobedience and online direct action. For both dimensions, the enhancing role of technologies should be recognised in three respects:
* They allow for the broader dissemination of information ahead of, during, and following assemblies, enhancing possibilities for participation beyond those physically present, as well as enhancing the public’s access to information;
* They enhancing the communicative impact of assemblies on their target audience, increasing the possibility of any demands or requests being met;
* Secure communications in particular enable the anonymous exercise of rights, which is particularly important in environments where assemblies are suppressed, especially for individuals and communities who are discriminated against.
1. For protests that take place in private places, including online, the Human Rights Committee should also consider the human rights responsibilities of private actors, in particular in determining any conflict between those exercising their rights and the owners of a particular platform. A private entity’s human rights responsibilities should be considered alongside any prerogative they are claiming as part of their property interest.
2. In relation to the exercise of the right of peaceful assembly online, the UN Special Rapporteur on freedom of opinion and expression has pointed to the Ruggie Principles on Business and Human Rights to make clear that private communication infrastructure owners and private online platform owners have a responsibility to respect the human rights of Internet users, including their right of peaceful assembly.[[30]](#footnote-31)

**Limited scope of restrictions**[[31]](#footnote-32)

1. The Protest Principles set out applicable standards in relation to limiting human rights in protests, including the right of peaceful assembly.[[32]](#footnote-33) Many of these standards draw upon existing work of the Committee, in particular its General Comments, and the Siracusa Principles.[[33]](#footnote-34) In this submission, rather than reiterate well-established principles, we focus on areas that in our view require specific attention for normative development, to ensure more granular guidance to States Parties on their obligations under Article 21 of the ICCPR.
2. “In conformity with the law”
3. The use of the term “in conformity with the law” in Article 21 of the ICCPR, should not be interpreted to imply any lower standard of legality for limitations on the right of peaceful assembly than other limitations within the ICCPR. It should be the same standard that applies to interpreting the language of “provided by law” within Article 19 of the ICCPR, as elaborated in the Committee’s General Comment No. 34:[[34]](#footnote-35)

“*For the purposes of paragraph 3, a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not*.”

1. The Committee has at various points raised concerns with national laws for being vague or overbroad, implying that it does not distinguish “in conformity with the law” from the concept “provided by law”.[[35]](#footnote-36)
2. Interpreting “public order” and “public safety”
3. For States, the ambiguity of the term “public order” is routinely exploited to justify extensive limitations on rights, including to peaceful assembly. The term has received relatively little attention from the Committee, with relatively little guidance offered in relation to its use in Article 19(3) ICCPR in General Comment No. 34.[[36]](#footnote-37) The Committee has, however, criticised States for over-reliance on the term “public order” where legal frameworks do not provide sufficient guidance on its interpretation for limiting rights, in particular where violations of public order, or incitement thereof, are the basis for criminal liability.[[37]](#footnote-38) General Comment No. 37 is therefore an important opportunity to better define the contours of “public order” and fill what might be considered a normative gap.
4. In the Protest Principles, ARTICLE 19 offers two observations in relation to “public order” limitations on protests, where the right of peaceful assembly will, invariably, be engaged. Firstly, the Protest Principles specify that “exercising the right to protest, including spontaneous, simultaneous and counter protests, should be considered an essential characteristic of public order and not a de facto threat to it, even where the protest causes inconvenience or disruption.”[[38]](#footnote-39) Secondly, the Protest Principles draw upon the limited guidance of the Siracusa Principles to specify: “public order may be invoked only where protests present a genuine and sufficiently serious threat to the very functioning of society or the fundamental principles on which society is founded, such as the respect of human rights and the rule of law.”[[39]](#footnote-40)
5. The Committee should establish a similarly high threshold for interpretations of “public order” under Article 21 ICCPR, ensuring that the term is not abused to limit peaceful assemblies that are simply annoying or offensive to people who are opposed to the ideas or claims that an assembly is seeking to promote,[[40]](#footnote-41) as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties.[[41]](#footnote-42)
6. The Committee has made clear that protecting the right to freedom of peaceful assembly requires accepting disruptions to public life, implying that inconveniences to the free-flow of traffic, for example, are not a basis to justify wide-ranging limitations.[[42]](#footnote-43) In ARTICLE 19’s view, the way in which assemblies may cause inconvenience to everyday life should not be considered issues of “public order”, but instead such factors may provide basis for limitations for the protections of “the rights of others”, provided this also makes clear that inconvenience or disruption to others will not be considered by themselves sufficient for limiting assembly rights.[[43]](#footnote-44) The European Court of Human Rights has recognised that a “certain degree of tolerance” towards disruption to ordinary life caused by demonstrations is necessary “if the freedom of assembly is not to be deprived of all substance”,[[44]](#footnote-45) which is a principle that finds support in the jurisprudence of the European Court of Justice.[[45]](#footnote-46)
7. The General Comment is also an opportunity for the Committee to define “public safety”. Since this is not a ground for limiting the right to freedom of expression under Article 19(3) of the ICCPR, it must relate to specific concerns that arise from the physical presence of a (presumably large) number of persons present at a gathering. The Protest Principles suggest “public safety” should only be invoked “against a specified and genuine danger to the life or physical integrity of people, or serious damage to their property.”[[46]](#footnote-47)

**States of emergency**[[47]](#footnote-48)

1. On the relationship between Article 21 of the ICCPR and the potential for emergency derogations under Article 4 of the ICCPR, ARTICLE 19 encourages the Committee to make clear that acts of collective expression in an assembly, even where they are “not peaceful”, will not “threaten the life of the nation”, and therefore derogations should never be made for the purpose of limiting assemblies.[[48]](#footnote-49)
2. We are particularly concerned at situations in which States facing widespread protests characterise the exercise the right of peaceful assembly as “unrest” or “terrorism”, wrongly equating threats to the continued political power of an incumbent government to threats to the life of the nation. In General Comment No. 37, the Committee should build upon their Concluding Observations to elaborate this point.[[49]](#footnote-50)
3. The Committee should also draw upon the UN Special Rapporteur on the protection and promotion of human rights while countering terrorism’s work in this field. In the mandate’s recent report to the Human Rights Council, she observed:

*Emboldened by pervasive security rhetoric, the last few years have seen the emergence of ever more unhinged laws that directly or indirectly choke and suppress civil society. Not necessarily addressing a direct threat of terrorism, such legislation typically addresses the need to protect national security, including through the use of emergency powers.[[50]](#footnote-51)*

1. In her 2017 Human Rights Council report on “states of emergency” the mandate called for “the reach and breadth of counter-terrorism law that enables de facto, complex and permanent states of emergency [to be] recognized and robustly regulated.”[[51]](#footnote-52) The Committee should draw upon her recommendations, in particular to restate the prohibition on permanent states of emergency, and ensure that properly declared emergencies and associated derogations from international human rights treaties are subject to judicial oversight, and are regularly reviewed for their necessity and proportionality, with particular attention to their potentially discriminatory impacts.[[52]](#footnote-53) In the rare circumstances that States legitimately derogate from Article 21 ICCPR, procedural rights that enable contestation, debate and review of emergency powers are critical.[[53]](#footnote-54) At the same time, the Committee should be clear that derogations from Article 21 ICCPR do not affect the engagement of non-derogable rights in assemblies, for example the absolute prohibition on torture.

**Non-discrimination**

1. In General Comment No. 37, the Committee should expressly raise concerns at the discriminatory targeting of individuals and groups, who often belong to minorities, on the basis of protected characteristics, in particular where they collectively exercise their rights to challenge discrimination or to criticise the government or other powerful actors.[[54]](#footnote-55) An expansive interpretation should be given to protected characteristics, with a specific but non-exhaustive listing, expanding on the grounds listed in Articles 2(1) and 26 of the ICCPR, consistent with the Committee’s jurisprudence.[[55]](#footnote-56)
2. For individuals and groups who face discrimination, including multiple and intersecting forms of discrimination, exercising their rights of peaceful assembly can carry additional and differential risks. These risks may vary in form, and include legal, physical, or digital security risks. Where such risks are identified, measures should be taken to ensure such individuals and groups may exercise their rights, including, where necessary, through reforms to bring laws and policies in line with international human rights law, training of (and where necessary disciplinary action against) law enforcement, and measures to protect individuals from counter-protesters or agents provocateur.[[56]](#footnote-57)
3. Specific consideration should also be given to addressing the impact of gender-based stereotypes and gender-based discrimination, including sexual and gender-based violence against women, that has the purpose or effect of impairing or nullifying women’s enjoyment of their right of peaceful assembly, on the basis of substantive equality.[[57]](#footnote-58) This includes addressing the differential impact of gender-based discrimination on the stigmatisation of women protesters, which can increase their exposure to human rights violations and abuses in the context of protest, and obstruct their access to remedies. Particular attention should be given to the disproportionate risk of sexual- and gender-based violence against women protesters both in the context of assemblies, and in detention.
4. Age-based discrimination against children should also be addressed, and specific attention to give to the rights of children to organise and take part in assemblies on the same basis as adults, as guaranteed in Article 15 of the Convention on the Rights of the Child.[[58]](#footnote-59) The Committee on the Rights of the Child has on elaborated States’ duties under the Convention, and this guidance should be drawn upon in General Comment No. 37, giving due regard to the autonomy of children as well as their potential vulnerability.[[59]](#footnote-60) It should also be noted that age-based discrimination against the participation of children in assemblies may prevent primary care-givers for children – disproportionately women – from exercising their rights.
5. Questions pertaining to States’ obligations under Article 20(2) of the ICCPR to prohibit advocacy of hatred that constitutes incitement to discrimination, hostility or violence, are examined below.
6. **Obligation to respect**

**Presumption in favour of peaceful assembly**[[60]](#footnote-61)

1. The jurisprudence of the Committee strongly supports a presumption in favour of the right of peaceful assembly, evidenced by the significant number of communications in which a violation of Article 21 of the ICCPR was found for the rejection of notifications.[[61]](#footnote-62) Similarly, UN special procedures have encouraged States to reflect this presumption in national legal frameworks, and asserted that “no assembly should be treated as an unprotected assembly”.[[62]](#footnote-63)
2. The presumption in favour of peaceful assembly should also carry with it a responsibility on the part of public officials to not engage in expression or practices to stigmatise assemblies or their participants, but rather recognize protests as legitimate and important forms of public participation.

**Notification regimes**

1. ARTICLE 19 considers that a presumption in favour of the right of peaceful assembly presupposes that individuals should not have to seek permission from the government to exercise the right.[[63]](#footnote-64) At most, and only for the purpose of enabling authorities, where necessary, to take measures to facilitate a peaceful assembly, voluntary regimes for notification should be in place.
2. The Committee has routinely criticised States that operate *de jure* or *de facto* authorisation regimes,[[64]](#footnote-65) reiterating the principle that the only legitimate purpose of notification regimes is to enable the authorities to facilitate the exercise of rights.[[65]](#footnote-66) It has implied support for notification periods of 48 hours.[[66]](#footnote-67) The Committee has also recognized that spontaneous assemblies fall within the scope of Article 21 of the ICCPR, and should be specifically protected in law,[[67]](#footnote-68) a principle supported by other treaty bodies and regional mechanisms.[[68]](#footnote-69) Moreover, failure to notify should never be the basis for dispersing an assembly.[[69]](#footnote-70)
3. UN special procedures have reinforced a number of these points, also setting out particular considerations for ensuring that notification regimes comply with international human rights law, including Article 21 of the ICCPR.[[70]](#footnote-71)
4. While ARTICLE 19 reflects these standards in the Protest Principles,[[71]](#footnote-72) we retain the view that a progressive approach, affording maximum protection to Article 21 of the ICCPR while also allowing the State to manage other prerogatives, would be to adopt *voluntary* notification procedures. This would recognize that, in certain circumstances (e.g. protesting abuses of power by law enforcement), non-cooperation with the authorities has an integral expressive value that should be protected. It would also remove any need for ‘spontaneous assemblies’ to be afforded special protection, and avoid the need to define the legal parameters of ‘spontaneity’. Importantly, it would also mitigate the potential discriminatory impacts of mandatory notification regimes that, depending on their degree of prescriptiveness, may preclude certain individuals from complying with their requirements, making them vulnerable to the denial or rights or penalties for the exercise of rights. This is particularly the case for individuals or groups who have low access to education, limited spoken or written abilities in official/recognised languages, limited understanding of the law, or are either not close to physical offices where notification is required, or do not have Internet access.
5. We therefore urge the Committee to consider the extent to which according undue legitimacy to notification regimes in General Comment No. 37 may entrench such practices and limit progress away from these bureaucratic and rights-limiting arrangements. In reality, mandatory notification regimes only work to undermine the presumption in favour of peaceful assembly, and States should therefore be invited to abandon them.

**Time, place and manner limitations**

1. The Committee should avoid implying in General Comment No.37 that time, place or manner limitations on assembly have any less potential to deprive individuals the communicative impact of their action, than content-based limitations. In our experience, these forms of limitation are disproportionately employed against assemblies where the authorities take issue with the content or purpose of an assembly, in particular where the organisers or participants are from a discriminated-against group.
2. Numerous considerations around the duration, location and form of assemblies are set out above in relation to “understanding assemblies”, including the importance of recognizing the engagement of peaceful assembly in private spaces, including those that are functionally public, as well as the importance of recognizing the legitimacy of protests of extended duration. Further international standards are also reflected in ARTICLE 19’s protest principles in relation to time, place and manner limitations.[[72]](#footnote-73)
3. We note that the Rapporteur for General Comment No. 37 did not include questions in the preparatory note relating to acts of civil disobedience or direct action in advance of the first consultations, and this omission should be addressed during the half-day meeting.

i. Restrictions on acts of civil disobedience or direct action

1. ARTICLE 19 considers that non-violent direct action, and civil disobedience, should be considered legitimate forms of protest, and, where they involve more than one person, should fall within the protective scope of Article 21 of the ICCPR, and any restrictions on such protests should be justified in accordance with the limitations clause therein.[[73]](#footnote-74)
2. Both forms of action invariably include conduct where participants intentionally break the law in order to communicate unequivocally to an audience, usually a government or business enterprise, that their conduct must change. These forms of protest are, throughout history, among the most effective, leading to significant advances in protection for human rights, in particular the right to equality and freedom from discrimination.[[74]](#footnote-75) The action may take on forms that are direct, where participants break a law that they want to see changed, or indirect, where the law violated is not the object of the protest, but breaking the law is necessary to achieve symbolic and/or other communicative objectives.
3. It does not appear that the Committee has previously addressed acts of civil disobedience or direct action as such in its jurisprudence, UN special procedures have interpreted acts that presumably include some level of unlawful conduct, such as occupations and sit-ins, to be within the protection of the ICCPR.[[75]](#footnote-76) While the European Court of Human Rights has expressed support for the exercise of the right of peaceful assembly where doing so disrupts traffic, or causes damage that falls short of violence, it has not framed such conduct as being unlawful *and* in need of any form of protection.[[76]](#footnote-77) It may be argued that the decision of the European Court of Human Rights in *Appleby and Others* implies support for pamphleteers violating laws in relation to trespass where this is the only avenue for effective communication with the public.[[77]](#footnote-78) At the national level, there are examples of limited protection being given to acts of non-violent direct action and civil disobedience.[[78]](#footnote-79)
4. While ARTICLE 19 does not consider that States should define in law the circumstances under which laws may be broken, we do consider that States should recognise that certain forms of law breaking can involve the exercise of rights, and that the imposition of limitations in these circumstances must therefore comply with international human rights law. In jurisdictions that provide for prosecutorial discretion in criminal cases on the basis of public interest considerations, such discretion could be exercised favourably for persons who have broken the law, or, where sanctions are imposed, the exercise of rights may be considered a mitigating factor in sentencing.[[79]](#footnote-80)
5. As part of the State’s obligation to protect, the Protest Principles offer substantial guidance in relation to the application of limitations against acts of civil disobedience and direct action, which we invite the Committee to consider:

*16.7 Any restrictions on protests that take the form of non-violent direct action should be based on an individualised assessment in accordance with the test set out in Principle 4. In particular:*

1. *States should recognise that some criminal offences, when applied to non-violent direct action/civil disobedience, including but not limited to aggravated trespass or squatting, have a chilling effect on the right to protest. They should be replaced by civil or administrative remedies where appropriate when relating to protest;*
2. *Law enforcement should be allowed to exercise discretion in considering whether the strict application of criminal or administrative offences is an appropriate and proportionate form of restriction. Criminal law sanctions should be applied only against non-violent direct action in the most serious cases if less severe restrictions or measures could not achieve the same effect;*
3. *Judicial authorities should consider the expressive nature of the conduct as a mitigating circumstance when applying sanctions;*
4. *In determining the proportionality and necessity of restrictions, law enforcement and judicial authorities should employ a public interest assessment, taking into account:*
	1. *The importance of upholding the exercise of fundamental rights and maintaining the ability of individuals to enjoy their right to protest;*
	2. *The non-violent manner of the expressive conduct;*
	3. *The level of disruption of the expressive conduct;*
	4. *The type of targeted entity;*
	5. *The actual harm caused, with the deciding factor being not whether damage occurred, but whether it was unduly substantial. The test of substantial damage should not be one of mere embarrassment, disruption or discomfort and should be considered in context, and with regards to the type of targeted entity;*
	6. *In cases concerning the use of digital technologies for expressive purposes, law enforcement and judicial authorities should consider whether the targeted entity has any alternative means of communication and the extent to which the protest resulted in a violation of the right to freedom of expression of the targeted entity online.*

**Content limitations**

1. It is important that General Comment No. 37 reinforces and builds upon the guidance of General Comment No. 34 in

relation to content-based limitations, to make clear that these same principles also apply to collective forms of expression, and in particular to stress the exceptional nature of prior restraints on expression, which authorities commonly seek to enforce against the organisers and participants in assemblies.[[80]](#footnote-81)

1. For the purposes of these submissions, ARTICLE 19 focuses on content limitations on peaceful assembly in the online context, as well as limitations pursuant to States obligations under Article 20(2) of the ICCPR. In both fields, we consider there are opportunities for the Committee to address normative gaps, or develop further norms already articulated in General Comment No. 34.
2. Limiting the right of peaceful assembly online[[81]](#footnote-82)
3. ARTICLE 19 considers that States’ legislation should expressly recognise, in the context of the freedom to choose the location of an assembly, that assemblies may take place online, and may not be limited except in accordance with the requirements of the limitations provisions of Article 19(3) and Article 21 of the ICCPR.[[82]](#footnote-83) As outlined above, internet platforms and the infrastructure on which they depend should be considered a quasi-public space, with the possibility of internet users’ rights taking precedence over the property interests of platform or infrastructure owners.
4. In relation to online limitations that engage Article 21 of the ICCPR, the Committee has raised concerns at the blocking of websites as a means to frustrate the organising of offline assemblies.[[83]](#footnote-84) The standards the Committee has applied in relation to infringements of online expression should also be considered applicable by analogy to limitations on the right of peaceful assembly online, including in relation to restrictions on the operation of websites.[[84]](#footnote-85)
5. General Comment No. 37 should also be considered an opportunity to consolidate normative advances in understanding the application of international human rights law online, including in relation to the right of peaceful assembly under Article 21 ICCPR.[[85]](#footnote-86) In particular, the Committee should draw upon the authoritative standards advanced by States at the UN Human Rights Council,[[86]](#footnote-87) in addition to the normative contributions in the thematic reports of UN special procedures.[[87]](#footnote-88)
6. As priorities, the Committee should make clear that everyone should, by default, be allowed to freely use digital technologies in peaceful assemblies, including as part of preparations for assemblies, and for commentary on assemblies (including after the assembly has ceased),[[88]](#footnote-89) and that States should promote universal Internet access on a rights-basis.[[89]](#footnote-90) In particular, the following standards should be integrated into General Comment No. 37:
	* **Content restrictions online** that apply to acts of collective expression and therefore engage Article 21 of the ICCPR should comply with the requirements of legality, legitimate aim, and necessity and proportionality.[[90]](#footnote-91)
	* **“Internet shutdowns” or “kill switches”**, defined as measures to intentionally prevent or disrupt Internet access, are always a disproportionate interference with human rights.[[91]](#footnote-92) States at the UN Human Rights Council have specifically condemned attacks on connectivity where they are used as part of a strategy to frustrate the exercise of the right of peaceful assembly.[[92]](#footnote-93) The UN Special Rapporteur on freedom of opinion and expression has called on States to cease the practice, observing that shutdowns rarely have a sound legal basis,[[93]](#footnote-94) “invariably fail to meet the standard of necessity”, and “are generally disproportionate.”[[94]](#footnote-95) UN and regional mandates on freedom of expression have come together to state that cutting off access to the Internet can never be justified under international human rights law.[[95]](#footnote-96)
	* **Internet blocking and filtering** raise similar concerns to Internet shutdowns. In relation to blocking orders, the UN and regional mandates on freedom of expression have advised that “State mandated blocking of entire websites, IP addresses, ports or network protocols is an extreme measure which can only be justified where it is provided by law and is necessary to protect a human right or other legitimate public interest, including in the sense that it is proportionate, there are no less intrusive alternative measures which would protect the interest and it respects minimum due process guarantees”,[[96]](#footnote-97) building upon the Committee’s guidance in General Comment No. 34.[[97]](#footnote-98) By contrast, the mandates observe that content filtering systems imposed by governments are, as a form of prior censorship, never justified under international human rights law.[[98]](#footnote-99)
	* **Limitations to online anonymity and encryption** chill the exercise of the right of peaceful assembly, online and offline, and potentially violate this right, in addition to the rights to freedom of expression and to privacy.[[99]](#footnote-100) ARTICLE 19 considers that the ability to conceal one’s identity can have an expressive purpose, and is integral to individual autonomy, in particular for seeking and access information, but also for choosing the conditions of one’s interactions with others. States at the UN Human Rights Council have recognised their importance to peaceful assembly,[[100]](#footnote-101) and have called on States “not to interfere with the use of such technical solutions.”[[101]](#footnote-102) The UN Special Rapporteur has called on States to protect encryption and anonymity tools in law and policy, making clear that bans on their use are incompatible with international human rights law, and that limitations must be justified according to the test of legality, legitimate aim, and necessity and proportionality.[[102]](#footnote-103) The Committee should consider the particular importance of encryption and anonymity tools for individuals and groups that face discrimination, as well as those operating in environments where organising or engaging in peaceful assemblies carries with it risks of surveillance by the government or private actors.[[103]](#footnote-104) This also applies to offline assemblies, where any limitations to attempts by individuals to conceal their identity (e.g. by requiring the removal of masks), should be justified on the basis of an individualised suspicion of a serious criminal offence, and by reference to the test of the limitations clause in Article 21 of the ICCPR.[[104]](#footnote-105)
	* **Intermediary liability** - States are increasingly placing regulatory pressure on private intermediaries to take action to restrict online content, including through automated processes, thereby “privatising” censorship, with the potential to impact the right of peaceful assembly online, as well as freedom of expression.[[105]](#footnote-106) UN and regional freedom of expression mandates have joined forces to recommend that “Intermediaries should never be liable for any third party content relating to those services unless they specifically intervene in that content or refuse to obey an order adopted in accordance with due process guarantees by an independent, impartial, authoritative oversight body (such as a court) to remove it and they have the technical capacity to do that.”[[106]](#footnote-107)
	* **Private actors, including intermediaries and online platforms,** have human rights responsibilities under the Ruggie Principles on Business and Human Rights to respect the human rights of Internet users, including their right of peaceful assembly.[[107]](#footnote-108) States at the Human Rights Council have also recognised that Internet companies have responsibilities to protect the human rights of their users, and specifically that “international human rights law should guide private sector actors and be the basis for their policies”.[[108]](#footnote-109) As the Special Rapporteur has identified, this further requires that companies ensure transparency around any decisions impacting freedom of peaceful assembly, including vis-à-vis requests from governments or third parties for user-data or content removal, and to ensure accountability and access to remedy.[[109]](#footnote-110)
7. The Committee should recognize a strong relationship between the right to privacy under Article 17 of the ICCPR, and the freedom of individuals to engage in online forms of communication, including in relation to the exercise of the right of peaceful assembly under Article 21 of the ICCPR (see more on “surveillance”, below).
8. Advocacy of hatred that constitutes incitement to discrimination, hostility or violence[[110]](#footnote-111)
9. Limitations to the content or cause of an assembly require particularly close supervision, and ARTICLE 19 considers that the principles the Committee has articulated in relation to content limitations on individual acts of expression apply equally to acts of collective expression. While those principles are well established, the frequency with which States disregard their human rights obligations in this area necessitates that the standards set out in General Comment No. 34 be reasserted, tailored as appropriate to the particularities of peaceful assemblies.[[111]](#footnote-112)
10. States require further normative guidance in relation to assemblies that have discriminatory purposes, or involve the expression of discriminatory opinions or ideas (“hate speech”). Distinguishing which assemblies falling within this category additionally engage Article 20(2) of the ICCPR (the obligation to prohibit incitement), alongside Articles 19 and 21, is particularly important.
11. Since the Committee adopted General Comment No. 34, and addressed the relationship between Articles 19 and 20(2) of the ICCPR, there have been a number of developments to advance normative understandings in this field, though not specifically in relation to assemblies. These include:
	* The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence;[[112]](#footnote-113)
	* Guidance from other treaty bodies, in particular the Committee on the Elimination of Racial Discrimination in General Recommendation No. 35, including its adaptation of the Rabat Plan of Action for the purpose of interpreting Article 4 of the International Covenant on the Elimination of all forms of Racial Discrimination;[[113]](#footnote-114)
	* The discontinuation of resolutions on “defamation of religions” at the UN Human Rights Council and General Assembly, and continued consensus support for the framework of HRC Resolution 16/18 on addressing religious intolerance, and the limited role it foresees for limitations on rights.[[114]](#footnote-115)
12. These normative developments build upon General Comment No. 34, to move away from determining limitations on expression by reference to the *discriminatory content* of an opinion or idea, towards a more comprehensive assessment of the *intent* behind the expression, the *influence* of the expression to mobilize an audience to engage in action, and the *impact* on a target group.[[115]](#footnote-116)
13. General Comment No. 37 is therefore an important opportunity for the Committee to take stock of and consolidate the normative developments around Article 20(2) ICCPR, and around “hate speech” more broadly, and elaborate on how this normative development relates to the right of peaceful assembly.
14. Several points the Committee made in General Comment No. 34 deserve repeating in relation to peaceful assembly, including that Article 20(2) of the ICCPR is *lex specialis* in relation to other rights, including Article 21, and that any limitations pursuant to Article 20(2) of the ICCPR must also be justified under the limitations clauses of Article 21.[[116]](#footnote-117) The Committee’s assertion that prohibitions on blasphemy, as well as prohibitions of opinions about historical facts, are incompatible with the convention unless those expressions specifically constitute incitement per Article 20(2) of the ICCPR,[[117]](#footnote-118) should also be reiterated in relation to collective forms of expression in assemblies.
15. There has been relatively limited guidance from international bodies on when an assembly may engage States’ obligations to prohibit incitement under Article 20(2) of the ICCPR.[[118]](#footnote-119) In various Concluding Observations, the Committee has raised concerns around States’ responses (or lack thereof) to collective expression of hatred, but has not necessarily framed this as a failure to implement Article 20(2) ICCPR.[[119]](#footnote-120)
16. The Committee has been clearer on when Article 20(2) of the ICCPR is not engaged. For assemblies that offend majority sentiments to the extent that they pose the danger of facing violent retaliation, they have been clear that the assembly must go ahead and its participants be protected.[[120]](#footnote-121) Distinguishing expression that *provokes* a hostile reaction against those engaged in acts of expression, from expression which intentionally incites an audience to unlawful conduct against third persons,[[121]](#footnote-122) is essential, in particular to protect the rights of discriminated against individuals and groups to peaceful assembly.[[122]](#footnote-123)
17. When addressing the relationship between Article 21 of the ICCPR and Article 20(2) of the ICCPR, there are numerous considerations the Committee should take into account:
* Article 20(2) of the ICCPR only *requires* States to prohibit *particularly severe* forms of “hate speech”, and does not imply a prohibition on all forms of discriminatory expression, including in the context of assemblies. While all “hate speech” raises concerns in relation to tolerance and respect for diversity, not all “hate speech” may legitimately be subject to restrictions under Article 19(3) of the ICCPR.[[123]](#footnote-124)
* The need to interpret the list of protected characteristics in Article 20(2) of the ICCPR expansively, to include all protected characteristics recognized by international human rights law, and to consider the possibility of multiple and intersecting forms of discrimination, including on the basis of gender.[[124]](#footnote-125)
* States must justify any limitations on the right of peaceful assembly pursuant to Article 20(2) of the ICCPR in accordance with the limitations clause of Article 21 of the ICCPR, *and* in accordance with Article 19(3) of the ICCPR, with Article 19(3) continuing to apply even where an assembly ceases to be peaceful.[[125]](#footnote-126)
* For any prohibition on an assembly pursuant to Article 20(2) ICCPR, the obligation is on the State to show specific intent, by organisers or participants, to engage in acts that would incite others to commit acts of discrimination, hostility or violence.[[126]](#footnote-127) States must ensure that isolated or sporadic acts of individual participants are not attributed to the conduct of the assembly as a whole.
* The need to incorporate the Rabat Plan of Action 6-factor “threshold test” for determining if “advocacy of hatred” is so severe that it constitutes incitement to hostility, discrimination or violence, and that those outcomes are a likely consequence of the collective expression in issue. A particularly high threshold should be required for imposing prior-restraints or prohibitions on otherwise peaceful assemblies, as well as for responses to assemblies in the criminal law. Prior-restraints on expression, including collective expression in the form of assemblies, should be considered extreme, and only used exceptionally and as a last resort, according to a similar if not higher standard than the imposition of criminal sanctions after the fact.[[127]](#footnote-128)
* Insignia, uniforms, emblems, music, flags or signs that are historically associated with discrimination against certain groups should only be prohibited in circumstances where they are intended to and are likely to incite imminent violence.[[128]](#footnote-129)
* The importance of safeguarding against the abuse of “incitement” laws to persecute persons engaged in minority or dissenting expression, including in assemblies.[[129]](#footnote-130)
* The existence of a wide range of non-coercive policy responses that are available to States to address the root causes of hatred, without relying upon the proscription of expression or assemblies, which should be considered in determining the necessity and proportionality of prohibitions.[[130]](#footnote-131)
* The importance of ensuring that reporting or commentary on assemblies or expression in assemblies that advocates hatred is not be equated with incitement, unless the reporter or commentator shares specific intent for incited action to occur.[[131]](#footnote-132)
1. Due to the specific “triangular” nature of incitement, the Committee should distinguish assemblies that directly threaten violence or other unlawful conduct, as well as assemblies that intend to directly intimidate or harass persons on the basis of a protected characteristic.[[132]](#footnote-133) These do not engage Article 20(2) of the ICCPR, but may still be limited. At the same time, the Committee should ensure that such limitations are construed narrowly, and not used simply to constrain abusive or insulting speech, even if it is of a discriminatory nature.[[133]](#footnote-134)
2. **Obligation to protect**

**Duty to facilitate**[[134]](#footnote-135)

1. The duty of States to facilitate the right of peaceful assembly can be read into all of the decisions and concluding observations of the Committee concerning Article 21 of the ICCPR.[[135]](#footnote-136) The Committee has also identified authorities’ engagement in practices of harassing participants in assemblies, or journalists covering assemblies, as a violation of their positive obligation to facilitate and protect the right of peaceful assembly.[[136]](#footnote-137) The chilling or deterrent effect that violations of Article 21 of the ICCPR may have on the exercise of the right of peaceful assembly, also appears to be framed as a failure to facilitate.[[137]](#footnote-138)
2. At the same time, General Comment No. 37 is an important opportunity to clarify what the duty to facilitate entails. ARTICLE 19 recommends Principle 11 of the Protest Principles,[[138]](#footnote-139) which reflects regional standards and the recommendations of UN special procedures.

**Human rights approach to policing**[[139]](#footnote-140)

1. The duty to facilitate implies that police must take a human rights approach to facilitating peaceful assemblies. In their legislation and binding law enforcement regulations, States should elaborate clear and operationally focused rules on the policing of protests and make these available to the public. Policing of protests by law enforcement agencies should be guided by the human rights principles of legality, necessity, proportionality, and non-discrimination and should comply at all times with international human rights law and standards on policing, in particular the UN Code of Conduct for Law Enforcement Officials.[[140]](#footnote-141)
2. In particular, the Committee should emphasise that a human rights approach to policing requires:
* Adequate training, including on human rights standards, in particular on techniques to de-escalate conflict, such as through negotiation and mediation;[[141]](#footnote-142)
* A dialogue and engagement based approach to interaction with organisers and participants in assemblies,[[142]](#footnote-143) as well as clear communication to the public and media;[[143]](#footnote-144)
* Clear command structures as well as points of contact for the public within law enforcement;[[144]](#footnote-145)
* Only wearing regular gear and uniforms, with protective equipment only worn where strictly necessary, ensuring the clear display of identifying information;[[145]](#footnote-146)

**Dispersal and crowd control**[[146]](#footnote-147)

1. The HR Committee has frequently raised concerns with measures taken by States to disperse assemblies in circumstances that are not necessary or proportionate.[[147]](#footnote-148)
2. A number of principles could be developed to respond to these concerns in General Comment No. 37, drawing upon the guidance of UN special procedures, as well as commitments made by States at the UN Human Rights Council.[[148]](#footnote-149) Decisions to disperse protests should be taken as a last resort in accordance with the principles of necessity and proportionality and should be ordered by a competent authority only if an imminent threat of violence outweighs the right to protest; in particular:[[149]](#footnote-150)
* Dispersals should never be ordered due to non-compliance with prior notification requirements (if such requirements exist), or failure to comply with other illegitimate prior restrictions on protest;[[150]](#footnote-151)
* Isolated or sporadic acts of violence by individuals within a protest shall not justify the dispersal of a protest;
* Law enforcement officers should be obliged to clearly communicate and explain orders to disperse, so as to obtain, as far as possible, the understanding and compliance of protesters; protesters must be given sufficient time to disperse before there is any recourse to coercive means.[[151]](#footnote-152)
1. Crowd-control strategies that temporarily deprive specific individuals of their freedom of movement (e.g. such as “kettling”) should be used exceptionally and only if law enforcement officers have reasonable grounds to believe that the specific individuals being contained are liable to cause violence or serious disturbances elsewhere. In his country-visit to the United Kingdom, the UN Special Rapporteur raised specific concerns around the compatibility of such practices with international human rights law, including in relation to Article 21 of the ICCPR, and called for an end to them.[[152]](#footnote-153)
2. Such strategies should only be used as a form of extremely limited and temporary crowd-control, where other means of achieving the same aim have been exhausted, and only for as long as is absolutely necessary. In the exceptional cases where containment can be deployed, the police should moderate the impact of the measure by ensuring:[[153]](#footnote-154)
* Easy access to information for protesters and the public regarding the reason for, anticipated duration of, and exit routes from, any police containment;
* Clear signposting to basic facilities and amenities;
* Immediate access to the emergency services, as well as to state and non-state providers of first aid and other forms of assistance and care;
* Non-violent protesters and bystanders trapped as a result of the strategy, as well as vulnerable or distressed persons, are able to leave.

**Use of force**

1. ARTICLE 19 notes that the Committee has repeatedly raised concerns at State authorities’ excessive use of force at protests, in violation of Article 21 of the ICCPR, as well as other rights under the Covenant.
2. Concluding Observations often reference the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles),[[154]](#footnote-155) and the UN Code of Conduct for Law Enforcement Officials.[[155]](#footnote-156) These standards have been supplemented more recently through contributions of UN special procedures,[[156]](#footnote-157) as well as through a resource book on the use of force and firearms in law enforcement published by the Office of the United Nations High Commissioner for Human Rights and the United Nations Office on Drugs and Crime, and an updated training package of the Office of the High Commissioner on human rights law and law enforcement.[[157]](#footnote-158) These materials should all inform the development of General Comment No. 37.
3. The Committee has called on States to address unlawful and excessive use of force, often by reference to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[[158]](#footnote-159) Recommendations to States in this field also frequently include the need to establish independent authorities to receive, investigate and adjudicate complaints of excessive use of force.[[159]](#footnote-160) Where independent investigative mechanisms have been established following unlawful or disproportionate use of force, the Committee has criticised States for not securing convictions for those responsible.[[160]](#footnote-161)
4. States have recently committed to a number of important principles related to the use of force in HRC Resolution 38/11.[[161]](#footnote-162) These reflect guidance in Amnesty International’s “Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, which we recommend, as well as standards set out in Principle 13 of ARTICLE 19’s “Protest Principles”.

**Surveillance**

1. ARTICLE 19 considers that use of surveillance techniques for the indiscriminate and untargeted surveillance of persons exercising their rights of peaceful assembly should be prohibited, on the basis of Articles 17 and 21 of the ICCPR.
2. At numerous points, the Committee has raised concerns at the practice of States engaged in unlawful, arbitrary or unnecessary surveillance against persons exercising their right to freedom of peaceful assembly, including to identify individuals engaged in lawful activity,[[162]](#footnote-163) and noted the general deterrent impact of law enforcement using cameras and video recorders during demonstrations, specifically calling for clear guidance on such practices that is made accessible to the public.[[163]](#footnote-164)
3. ARTICLE 19 shares concerns expressed by the UN special rapporteur on freedom of opinion and expression regarding methods of facial recognition based on artificial intelligence models, including their potential discriminatory impacts when deployed for surveillance purposes in the context of assemblies.[[164]](#footnote-165) The Committee should consider the special rapporteur’s recommendation that when procuring or deploying artificial intelligence systems or applications, States should ensure that public sector bodies act consistently with human rights principles, with particular regard to disparate impacts on minorities, ensuring that their use complies with international human rights law.[[165]](#footnote-166)
4. General Comment No. 37 is an important opportunity for the Committee to clarify that interferences with privacy under Article 17 must meet the same three-part test as limitations on the right of peaceful assembly.[[166]](#footnote-167) As outlined above, the Committee should make clear the importance of strong protections for anonymity and encryption tools, to ensure the right to privacy and enable exercise of the right of peaceful assembly.
5. ARTICLE 19 is also concerned at the tendency of some States to monitor online expression related to assemblies, as well as to monitor online assemblies, and engage in disinformation campaigns or the use of bots as a strategy to frustrate online organising, including through crowding out the messaging of social movements.[[167]](#footnote-168)

**Strategic litigation against public participation (SLAPPs)**

1. UN special procedures have raised concerns at the use of civil law actions, in particular Strategic Lawsuits Against Public Participation” (SLAPPs) to frustrate the exercise of the right of peaceful assembly, in particular against protests taking the form of direct action.[[168]](#footnote-169) Such suits are based on civil claims such as nuisance, trespass, interference with contract and/or economic advantage, usually to intimidate activists with claims for large damages, or for the purpose of seeking injunctions to prevent future protests. Even where unsuccessful, the costs associated with defending against such suits is prohibitive, and has a significant chilling effect on the right of peaceful assembly.
2. Importantly, the UN Human Rights Council has called upon States “to avoid the abuse of […] civil proceedings, or threats of such acts at all times”, as part of the responsibility to protect human rights and prevent human rights violations and abuses.[[169]](#footnote-170) General Comment No. 37 must build upon this to call on States to restrict the possibility of civil law remedies being used to silence protesters and to obstruct the work of human rights defenders in protests, including strategic litigation against public participation (SLAPP). Furthermore, States should adopt legislation that considers SLAPP as an abuse of the judicial process which aims to restrict the legitimate exercise of the right to protest.[[170]](#footnote-171)
3. **Obligation to fulfil**[[171]](#footnote-172)
4. In relation to the obligation to fulfil, ARTICLE 19 recommends that General Comment No. 37 cover comprehensively the States’ obligations to ensure full transparency for public decision-making processes, and ensure full accountability for human rights abuses and violations, including through access to remedies.[[172]](#footnote-173) This must be complemented through measures to enable the free flow of information relating to protests, including through comprehensively protecting the right of access to information.[[173]](#footnote-174) Both aspects should be considered parts of the right to freedom of peaceful assembly, as well as protected acts of freedom of expression and access to information under Article 19 of the ICCPR.
5. The HR Committee has consistently raised concerns with measures taken by States to restrict journalists and independent observers monitoring assemblies, including law enforcement operations around assemblies.[[174]](#footnote-175) The importance of the right to observe, monitor and record assemblies has also been reiterated by UN special procedures,[[175]](#footnote-176) and affirmed by States at the Human Rights Council, who have called on “all States to pay particular attention to the safety of journalists and media workers observing, monitoring and recording peaceful protests, taking into account their specific role, exposure and vulnerability”.[[176]](#footnote-177) General Comment No. 37 should therefore clearly articulate an obligation on States to allow and actively facilitate reporting on, and the independent monitoring of, protests by all media and independent observers, without imposing undue limitations.[[177]](#footnote-178)
1. [The Right to Protest Principles](https://www.article19.org/data/files/medialibrary/38581/Right_to_protest_principles_final.pdf), ARTICLE 19, 2016. [↑](#footnote-ref-2)
2. “[Issues for consideration during a half-day general discussion in preparation for a General Comment on article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights](https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC37.aspx)”, Note by the Rapporteur. [↑](#footnote-ref-3)
3. The Protest Principles, *op. cit.*, Principle 1.1. [↑](#footnote-ref-4)
4. Note by the Rapporteur, Question 1: What are the unique features of the right to peaceful assembly, which distinguishes it from other related rights such as freedom of expression and political participation? What is the function, added value and rationale for this right in a social system based on democracy and human rights? Does the scope of the right differ depending on the context (for example, is it the same during political transitions)? [↑](#footnote-ref-5)
5. UN High Commissioner for Human Rights, Michelle Bachelet, address to 40th Session of the UN Human Rights Council, 6 March 2019; available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24265&LangID=E>. [↑](#footnote-ref-6)
6. Report of the UN Special Rapporteur on freedom of peaceful assembly and of association, A/73/279, recommendations from para. 101. Available at: <https://undocs.org/A/73/279> [↑](#footnote-ref-7)
7. Note by the Rapporteur, Question 2. When is an assembly not ‘peaceful’, and fall outside the scope of the protection of the particular right? What level of violence (or mere disruption?) is required not to consider it peaceful? To what extent can the violent conduct of certain individuals participating in the assembly be attributed to the group as a whole and render an assembly as a whole not peaceful? [↑](#footnote-ref-8)
8. The Protest Principles, *op. cit.*, Principle 1.2. [↑](#footnote-ref-9)
9. The Protest Principles, *op. cit.*, Principle 10.2(b). These factors correspond closely to those identified as a threshold test for assessing intent for and the likelihood of violence in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination hostility or violence, may be considered relevant. A/HRC/22/17.Add.4, 5 October 2012, [↑](#footnote-ref-10)
10. ECtHR, *G. vs. Germany*, App. No. 13079/87 (1989); *Plattform “Artze fur das Leben” vs Austria*, App. No. 10126/82 (1998), para 32. See also: The OSCE Guidelines on Freedom of Peaceful Assembly, Second Edition, 2012, para. 25. [↑](#footnote-ref-11)
11. See, for example: HR Committee, Alekseev vs. Russian Federation, Communication No. 1873/2009, UN Doc. CCPR/C/109/D/1873/2009, 2 December 2013, finding a violation of Article 21. The suggestion that a pro-LGBT rights protest would provoke a negative reaction in the public, whom the authorities considered opposed to the protest’s objectives, was not sufficient basis for denying authorisation to the assembly. [↑](#footnote-ref-12)
12. The Protest Principles, *op. cit.*, Principle 1.1.a.iv [↑](#footnote-ref-13)
13. M. Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, p. 487. The Protest Principles, *op. cit.*, Principle 1.1.d. See also, OSCE Guidelines, *op. cit.*, para 26. [↑](#footnote-ref-14)
14. The Protest Principles, *op. cit.* Principle 1.2.c. See also: ECtHR, *Christians against Racism and Fascism* *vs. the United Kingdom*, App. No. 9440/78 (1980). [↑](#footnote-ref-15)
15. Note by the Rapporteur, “Question 2. How should the term ‘peaceful assembly’ be understood? When is one dealing with an ‘assembly’? Does it require the expression of an idea through a gathering, and if so, what is the hallmark of such an expression of an idea (e.g. does it necessarily entail an appeal to the public opinion)? Does it cover strikes? Or do all gatherings (e.g., also sporting, religious, cultural events, or) qualify as ‘assemblies’? Does it matter whether the organizers pursue a commercial interest? In order to qualify as an assembly, are there requirements about where should the gathering should take place – in public, private or on-line? Can one person form an assembly?” Question 14: To what extent are private actors (including the owners of shopping centres) required to allow of facilitate peaceful assemblies? How should the responsibility of States in such situations be approached? How should public places (partly) owned by a State company (e.g. airports) be treated?; Question 19: “Moreover, to what extent does the right of peaceful assembly apply in the digital space? Can ‘gathering’ online impose obligations on States and other actors to facilitate it?” [↑](#footnote-ref-16)
16. The Protest Principles, *op. cit*., Principles 8, 9 and 10. [↑](#footnote-ref-17)
17. Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2019, A/HRC/31/66, at para. 10; available at: <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/66> [↑](#footnote-ref-18)
18. See, for example: Concluding Observations on Republic of Korea, CCPR/C/KOR/CO/4, at para 52, and Concluding Observations on Tunisia, A/42/40, 31 March 1987, at para 141, both expressing concerns on limiting assemblies that continue past midnight. [↑](#footnote-ref-19)
19. The Protest Principles, *op. cit.*, Principle 9. [↑](#footnote-ref-20)
20. In relation to acts of preparation, the Committee has raised concerns at the use of preventative arrests of demonstrators, for example in its Concluding Observations on Belgium, November 2010, as well as incidents of harassment or intimidation to deter persons participating in assemblies, for example in its Concluding Observations on Algeria, CCPR/C/DZA/CO/3, 12 December 2007, at para 25. The existence of notification or authorisation regimes also makes clear that the Committee considers the right to freedom of peaceful assembly to be engaged ahead of an assembly commencing. See, for example: Concluding Observations on the Maldives, CCPR/C/MDV/CO/1, 31 August 2012, at para 23; Concluding Observations on Uzbekistan, CCPR/C/UZB/CO/4, 17 August 2015, at para. 24. [↑](#footnote-ref-21)
21. HR Committee, Concluding Observations on Algeria, CCPR/C/DZA/CO/4, 17 August 2018, at para. 45. [↑](#footnote-ref-22)
22. Joint report A/HRC/31/66, *op. cit.*, at para. 10. [↑](#footnote-ref-23)
23. HRC Res 38/11 on the promotion and protection of human rights in the context of peaceful protests, A/HRC/RES/38/11, adopted by consensus on 6 July 2018, at preamble paragraph 22; available at: <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/38/11> [↑](#footnote-ref-24)
24. OSCE Guidelines, *op. cit.*, Principle 1.2. At the same time, the “definition recognises that, although particular forms of assembly may raise specific regulatory issues, all types of peaceful assembly – both static and moving assemblies, as well as those that take place publicly or privately owned premises or in enclosed structures – deserve protection.” [↑](#footnote-ref-25)
25. European Court, *Appleby v. the United Kingdom*, App. No. 44306/98, 6 May 2003 [↑](#footnote-ref-26)
26. Joint report A/HRC/31/66, *op. cit.*, at para. 84. [↑](#footnote-ref-27)
27. *Op. cit.*, at para. 85. [↑](#footnote-ref-28)
28. The Protest Principles, *op. cit.*, Principle 1.1(a)(v). [↑](#footnote-ref-29)
29. The Protest Principles, *op. cit.*, Principle 8(d). [↑](#footnote-ref-30)
30. In relation to owners of online platforms, see: UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/38/35, 6 April 2018, at para. 70; available online at: <https://freedex.org/a-human-rights-approach-to-platform-content-regulation/>. In relation to owners of infrastructure, see: UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/35/22, 30 March 2017, at para. 82 – 83. [↑](#footnote-ref-31)
31. Note by the Rapporteur, Question 6: When and how may the right of peaceful assembly be limited? Are the limitations affected by the modalities of the assembly (e.g. whether they take place in the open or within a building, whether they are stationary gatherings or marches)? Is it correct to say there is a ‘presumption’ under the Covenant in favour of allowing peaceful assemblies, and the onus is on those wishing to restrict such assemblies to justify such limitations? How should the procedural requirement for limitations on the right in sentence two of article 21 (that limitations can only be imposed ‘by law’) and the substantive requirements (this can be done only where it is necessary to protect national security, etc.) be understood? What is their relationship to other articles of the Covenant, including article 22? In what way are the limits on article 21 different from the limits of article 19? How should such limitations be enforced – is there e.g. a role for criminal sanctions, and if so when? What are the alternatives? Who can be held criminally responsible for violent conduct of individuals or groups that participate? What are the safeguards that should be in place to establish whether limitations on peaceful assemblies are permissible (e.g. judicial review)? What does an ‘effective remedy’ mean in time sensitive contexts? How can transparency of decision-making in relation to assemblies be ensured? And Question 9: What sort of limitations may be placed on assemblies as far as their form (e.g. place, manner and time) or their contents (e.g. promotion of violence) is concerned? Are there circumstances under which all peaceful assemblies may be prohibited for a certain period in connection with states of emergencies, or independently of states of emergency? Can all assemblies in particular places (e.g. ‘neutral zones’ around parliaments, courts or monuments) or during a specific time be prohibited? [↑](#footnote-ref-32)
32. Protest Principles, *op. cit*., at Principles 4 and 5. [↑](#footnote-ref-33)
33. **United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985).** [↑](#footnote-ref-34)
34. HR Committee, General Comment No. 34 on Article 19: freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011; at para. 25. [↑](#footnote-ref-35)
35. See, for example: the Concluding Observation on Peru (April 2013), which encouraged the State Party to review its definition of “hostile group” in Legislative Decrees 1094 and 1095 so that they would not be interpreted to apply against participants in demonstrations or social movements; the Concluding Observation on Iran (November 2011) took issue with the legality of limitations on public gathering and marches that were conditional on “compliance with Islam”; and Concluding Observation on Morocco (1999), which expressed concern at the breadth of notification requirements. [↑](#footnote-ref-36)
36. General Comment No. 34, *op. cit*., at para. 31, deals with public order (ordre public) mainly in relation to laws pertaining to contempt of court, but does not offer much guidance of general application.  [↑](#footnote-ref-37)
37. See, for example: Concluding Observations on Algeria, CCPR/C/DZA/CO/4, 17 August 2018 at para. 45, where “public order” is characterized as a “vague criteria”; Concluding Observations on Burundi, CCPR/C/BDI/CO/2, 21 November 2014, at para. 10; Concluding Observations on China (Hong Kong), CCPR/C/CHN-HKG/CO/3, 29 April 2013, at para. 10, and in relation to “inciting collective disobedience of public order”, at para. 16. [↑](#footnote-ref-38)
38. The Protest Principles, *op. cit.*, at Principle 4.2(b)(ii). [↑](#footnote-ref-39)
39. *Ibid.*  [↑](#footnote-ref-40)
40. HR Committee, *Nikolai Alekseev vs Russian Federation,* *op. cit.* [↑](#footnote-ref-41)
41. The Protest Principles, *op. cit.*, Principle 1.1.a.iv. [↑](#footnote-ref-42)
42. See, for example: Concluding Observation on the Republic of Korea (1999), a total prohibition on assemblies on public roads was overbroad; Concluding Observation on Togo, CCPR/C/TGO/CO/4, 18 April 2011, at para. 20, the Committee expressed concerns at a law prohibiting electoral meetings on public highways or between the hours of 10pm to 6am. [↑](#footnote-ref-43)
43. The Protest Principles, *op. cit*., Principle 4.2.(b)v. [↑](#footnote-ref-44)
44. European Court of Human Rights, *Ashughyan vs. Armenia,* Application. No. 33268/03 (2008), at para 90.  [↑](#footnote-ref-45)
45. ECJ, *Eugen Schmidberger vs. Republic of Austria*, Case C-112/00, 12 June 2003. [↑](#footnote-ref-46)
46. The Protest Principles, *op. cit.*, Principle 4.2(b)(vi) [↑](#footnote-ref-47)
47. Note by Rapporteur, Question 9: “Are there circumstances under which all peaceful assemblies may be prohibited for a certain period in connection with states of emergencies, or independently of states of emergency?” [↑](#footnote-ref-48)
48. The Protest Principles, *op. cit.*, at Principle 5. [↑](#footnote-ref-49)
49. See, for example, HR Committee: Concluding Observations on Peru (2003). [↑](#footnote-ref-50)
50. Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, on “the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders”, A/HRC/40/52, 18 February 2019; at para 45. [↑](#footnote-ref-51)
51. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, on “the human rights challenge of states of emergency in the context of countering terrorism”, A/HRC/37/52, 27 February 2018, at para 72. [↑](#footnote-ref-52)
52. *Ibid.*, at paras 74 - 77. [↑](#footnote-ref-53)
53. *Ibid.*, at para. 78. [↑](#footnote-ref-54)
54. Protest Principles, *op. cit.*, at Principle 3. [↑](#footnote-ref-55)
55. See, for example, the following HR Committee Concluding Observations: Sri Lanka, CCPR/C/LKA/CO/5, 21 November 2014, at para. 22 (Tamil minorities); Georgia, CCPR/C/GEO/CO/4, 19 August 2014, at para. 8 (LGBT people); Iraq, CCPR/C/IRQ/5, at para. 177 (LGBT people); Indonesia, CCPR/C/IDN/CO/1, 21 August 2013, at para. 28 (religious minorities); Dominican Republic, CCPR/C/DOM/CO/5, 19 April 2012, para. 25 (migrant workers); Iran, CCPR/C/IRN/CO/3, 29 November 2011 (religious minorities); Ethiopia, CCPR/C/ETH/CO/1, 19 August 2011, at para 25 (civil society organisations with members outside of the country). See also: HR Committee, Alekseev, *op. cit.*, 2 December 2013 (LGBT people). [↑](#footnote-ref-56)
56. Protest Principles, *op. cit*., at Principle 11(d). See also: HR Committee, *Alekseev*, op cit. [↑](#footnote-ref-57)
57. Human Rights Council Resolution 38/11, at operative paragraph 6. [↑](#footnote-ref-58)
58. Protest Principles, *op. cit.*, at Principle 7.2. See also HRC Resolution 38/11, at operative paragraph 7. [↑](#footnote-ref-59)
59. Committee on the Rights of the Child: Concluding Observations on Japan, UN Doc. CRC/C/15/Add.231, 26 February 2004, at paras 29 - 30; Concluding Observations on Myanmar 1997, UN. Doc. CRC/C/15/Add.69, 24 January 1997, at para. 28; Concluding Observations on Belarus, UN Doc. CRC/C/BLR/CO/3-4, 8 April 2011, at para 35; Concluding Observations on Turkey, UN Doc. CRC/C/R/CO/2-3, 20 July 2012, at para. 39; Concluding Observations on Syrian Arab Republic, UN Doc CRC/C/SYR/CO 3-4, 9 February 2012, at para. 47; Concluding Observations on Bahrain, UN Doc. CRC/C/BHR/CO/2-3, 3 August 2011, paras 40 - 41; Concluding Observations on Syrian Arab Republic, UN Doc CRC/C/SYR/CO 3-4, 9 February 2012, at para. 47; Concluding Observations on Bahrain, UN Doc. CRC/C/BHR/CO/2-3, 3 August 2011, at paras 40-41. [↑](#footnote-ref-60)
60. Note of the Rapporteur, *op. cit.*, at Question 6: “is it correct to say there is a ‘presumption’ under the Covenant in favour of allowing peaceful assemblies, and the onus is on those wishing to restrict such assemblies to justify such limitations?” [↑](#footnote-ref-61)
61. See, for example, a series of HR Committee decisions on Belarus and on Russia: Belarus, *Poplavny*, 2015; Belarus, *Statkevich*, 2015; Belarus, *Pugach*, 2015; Belarus, *Sudalenko*, December 2015; Belarus, *Sudalenko*, May 2015; Belarus, *Evrezov,* 2015; Belarus, *Kozlov,* 2015; Belarus, *Kirsanov*, 2014; Belarus*, Poliakov*, 2014; Belarus, *Youbko*, 2014; Russia, *Alekseev*, 2013; Belarus, *Turchenyak*, 2013; Belarus, *Sekerko*, 2013; Belarus, *Govsha*, 2012; Russia, *Chebotareva*, 2012 [↑](#footnote-ref-62)
62. Joint report, A/HRC/31/66, *op. cit.*, at 17(a). See also, Protest Principles, *op. cit.*, at Principle 6. [↑](#footnote-ref-63)
63. Protest Principles, *op. cit.*, Principle 7. [↑](#footnote-ref-64)
64. See, for example: HR Committee, Concluding Observations on Mali, CCPR/C/MWI/CO/1, 18 June 2012, at para 17; Concluding Observations on Jordan, CCPR/C/JOR/CO/4, 18 November 2010, at para 15; Concluding Observations on the Republic of Korea, CCPR/C/KOR/CO/4, 3 December 2015, at para. 15; Concluding Observations on Ukraine, CCPR/C/UKR/CO/7, 22 August 2013, at para. 21. [↑](#footnote-ref-65)
65. HR Committee, *Kivenmaa vs Finland*, Communication No. 412/1990, 31 March 1994. [↑](#footnote-ref-66)
66. HR Committee, Concluding Observations on Malawi, CCPR/C/MWI,CO/1, 18 June 2012, at para 17. [↑](#footnote-ref-67)
67. HR Committee, Concluding Observations on Switzerland (2017). See also: HR Committee, *Bazarov v. Belarus* (2014). [↑](#footnote-ref-68)
68. See various opinions by the Venice Commission and OSCE/ODIHR: Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic CDL-AD(2009)034, at 36; Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine CDL-AD(2009)052, at 23; ECtHR, *Eva Molnar vs Hungary*, Appl. no. 10346/05 (2009); ECtHR, *Ezelin vs France,* Appl. no. 11800/85 (1991); ECtHR, *Christians against Racism and Fascism vs the UK*, *op.cit.* [↑](#footnote-ref-69)
69. ECtHR, *Bukta & Others vs Hungary*, Appl. no. 25691/04 (2007), at para. 36. [↑](#footnote-ref-70)
70. Joint report, A/HRC/31/66, *op. cit.*, at para. 28. [↑](#footnote-ref-71)
71. At Principle 7.4 [↑](#footnote-ref-72)
72. At Principles 8 – 9. [↑](#footnote-ref-73)
73. Protest Principles, *op. cit.*, Principle 9.2. ARTICLE 19 notes that the HR Committee has raised concerns regarding the use of force against persons engaged in acts of civil disobedience. See, for example: Concluding Observations on Macedonia, CCPR/C/MKD/CO/3, 17 August 2015, at para. 19. [↑](#footnote-ref-74)
74. For a fuller explanation, see ARTICLE 19’s Protest Principles Background Paper, *op. cit.*, at pages 18 and 19. [↑](#footnote-ref-75)
75. Joint report A/HRC/31/66, *op. cit.*, at para. 10. [↑](#footnote-ref-76)
76. Most cases pertaining to direct action or civil disobedience have been dismissed at the stage of admissibility. See ARTICLE 19’s Protest Principles Background Paper, *op. cit.*, at note 82. [↑](#footnote-ref-77)
77. *Op. cit.* [↑](#footnote-ref-78)
78. See, for example, District Court of Amsterdam, *Shell (various entities) vs. Greenpeace Netherlands and Greenpeace International,* LJN: BX9310, 5 October 2012. [↑](#footnote-ref-79)
79. See, for an example of this approach, *R v. Jones,* [2006] UKHL 16, at para 89. [↑](#footnote-ref-80)
80. Protest Principles, *op. cit.*, at Principle 10. [↑](#footnote-ref-81)
81. Note of the Rapporteur, *op. cit.*, at Question 19: “[...] Moreover, to what extent does the right of peaceful assembly apply in the digital space? Can ‘gathering’ online impose obligations on States and other actors to facilitate it?” [↑](#footnote-ref-82)
82. Protest Principles, *op. cit.*, at Principle 8. See also: HRC Res 38/11, *op. cit.*; Joint report A/HRC/31/66, *op. cit.*, at para. 10. [↑](#footnote-ref-83)
83. See, for example, the List of Issues Prior to Review of Russia, August 2014, in relation to Fed Law 398-FZ. [↑](#footnote-ref-84)
84. HR Committee, General Comment No. 34, *op. cit.*, at para 43. [↑](#footnote-ref-85)
85. ARTICLE 19 submits that, by analogy, many of these same principles can be applied to the rights to freedom of opinion and expression (Article 19 ICCPR), freedom of association (Article 22 ICCPR), and privacy (Article 17 ICCPR). [↑](#footnote-ref-86)
86. In particular, HRC Resolution 38/7 on “the promotion, protection and enjoyment of human rights on the Internet”, 5 July 2018, and HRC Resolution 38/11 on “the promotion and protection of human rights in the context of peaceful protests”, 6 July 2018. [↑](#footnote-ref-87)
87. In particular the annual reports of the UN Special Rapporteur on the right to freedom of opinion and expression; available at: <https://freedex.org/resources/annual-reports/> [↑](#footnote-ref-88)
88. Protest Principles, *op. cit.*, at Principle 9.4, and Principles 19.1 and 19.3. HRC resolution 38/11 on human rights in the context of peaceful protests notes that “that the possibility of using communications technology securely and privately, in accordance with international human rights law, is important for the organization and conduct of assemblies,” and “that, although an assembly has generally been understood as a physical gathering of people, human rights protections, including for the rights to freedom of peaceful assembly, of expression and of association, may apply to analogous interactions taking place online”. [↑](#footnote-ref-89)
89. 2018 Joint Declaration on Media Independence and Diversity in the Digital Age of the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, at 1(a)(ii). [↑](#footnote-ref-90)
90. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/38/35, at paras. 13 and 65. [↑](#footnote-ref-91)
91. Protest Principles, *op. cit.*, Principle 9.4 [↑](#footnote-ref-92)
92. HRC resolution 38/11 on human rights in the context of peaceful protests, *op. cit*., “calls upon all States to refrain from and cease measures, when in violation of international human rights law, seeking to block Internet users from gaining access to or disseminating information online”; HRC resolution 38/7 on human rights and the internet, *op. cit.*, “condemns unequivocally measures in violation of international human rights law that prevent or disrupt an individual’s ability to seek, receive or impart information online, calls upon all States to refrain from and to cease such measures, and also calls upon States to ensure that all domestic laws, policies and practices are consistent with their international human rights obligations with regard to freedom of opinion and expression online”. [↑](#footnote-ref-93)
93. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/35/22, 30 March 2017, at paras 9 – 10. [↑](#footnote-ref-94)
94. *Ibid.*,at 14 and 15. [↑](#footnote-ref-95)
95. 2011 JOINT DECLARATION ON FREEDOM OF EXPRESSION AND THE INTERNET, by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, at para. 6b: “Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.” [↑](#footnote-ref-96)
96. 2017 Joint Declaration on freedom of expression and “fake news”, disinformation and propaganda, by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, at para. 1.f. [↑](#footnote-ref-97)
97. HR Committee, General Comment No. 34, *op cit.*, at para. 43. [↑](#footnote-ref-98)
98. 2017 Joint Declaration, *op. cit.*, at para. 1.g. [↑](#footnote-ref-99)
99. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 22 May 2015, A/HRC/29/32, at para. 56: “Encryption and anonymity, and the security concepts behind them, provide the privacy and security necessary for the exercise of the right to freedom of opinion and expression in the digital age. Such security may be essential for the exercise of other rights, including economic rights, privacy, due process, freedom of peaceful assembly and association, and the right to life and bodily integrity. Because of their importance to the rights to freedom of opinion and expression, restrictions on encryption and anonymity must be strictly limited according to principles of legality, necessity, proportionality and legitimacy in objective.” [↑](#footnote-ref-100)
100. HRC resolution 38/7 on human rights and the Internet, *op. cit.*, emphasises that “in the digital age, technical solutions to secure and protect the confidentiality of digital communications, including measures for encryption and anonymity, can be important to ensure the enjoyment of human rights, in particular the rights to privacy, to freedom of expression and to freedom of peaceful assembly and association”. HRC resolution 38/11 on human rights in the context of peaceful protests, op. cit., notes “that the possibility of using communications technology securely and privately, in accordance with international human rights law, is important for the organization and conduct of assemblies”. [↑](#footnote-ref-101)
101. HRC resolution 38/7, *op. cit.*, at operative paragraph 9. [↑](#footnote-ref-102)
102. Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “Encryption and anonymity follow-up report”, June 2018, at page 20. [↑](#footnote-ref-103)
103. Report A/HRC/29/32, at para. 12. [↑](#footnote-ref-104)
104. Protest Principles, *op. cit.*, Principle 9.3(d). [↑](#footnote-ref-105)
105. Report A/HRC/38/35, at paras. 15 - 17. [↑](#footnote-ref-106)
106. 2017 JOINT DECLARATION ON FREEDOM OF EXPRESSION AND “FAKE NEWS”, DISINFORMATION AND PROPAGANDA, by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, at para. 1(d). See also: Report A/HRC/38/35, at paras. 66 – 69. [↑](#footnote-ref-107)
107. In relation to owners of online platforms, see: UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/38/35, 6 April 2018, at para. 70; available online at: <https://freedex.org/a-human-rights-approach-to-platform-content-regulation/>. In relation to owners of infrastructure, see: UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/35/22, 30 March 2017, at para. 82 – 83. [↑](#footnote-ref-108)
108. Human Rights Council Resolution 38/7 on “the promotion, protection and enjoyment of human rights on the Internet”, A/HRC/Res/38/7, 5 July 2018; available at: <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/38/7>. The resolution also recognises the Ruggie Principles as the appropriate framework for assessing the human rights responsibilities of internet companies. [↑](#footnote-ref-109)
109. A/HRC/38/35, at para. 71 – 72. [↑](#footnote-ref-110)
110. Note by the Rapporteur, Question 7: Do particular obligations arise for organisers where participants in an assembly (including counter-demonstrations) intentionally advocate hatred, seek to intimidate others or call for or use force?; Question 9: What sort of limitations may be placed on assemblies as far as their form (e.g. place, manner and time) or their contents (e.g. promotion of violence) is concerned?; and Question 17: What is the relationship between article 21 and other rights in the ICCPR, such as […] freedom of expression and access to information (article 19); advocacy of hatred etc. (article 20); […] and equality and non-discrimination (articles 2 (1); 3; 26) (e.g. people who are frequently targeted, or in positions of vulnerability). [↑](#footnote-ref-111)
111. The Protest Principles, *op. cit.*, at Principle 10.1 – 10.2 [↑](#footnote-ref-112)
112. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence, A/HRC/22/17/Add.4, 5 October 2012. [↑](#footnote-ref-113)
113. The Committee on the Elimination of Racial Discrimination, General Recommendation No. 35 on “combating racists hate speech”, CERD/C/GC/35, 26 September 2013. The scope of the General Recommendation includes collective expressions of racist hate speech at “public gatherings” (see paragraph 7). Notable is the high threshold the Committee places for criminal restrictions on expression (and by extension, collective acts of expression), at paragraph 12, and the caution it advises on “hate speech” laws, given the potential for States to abuse them against the very minorities they should protect, at paragraph 20. [↑](#footnote-ref-114)
114. HRC Resolution 16/18 on “Combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence and violence against, persons based on religion or belief”, adopted by consensus on 24 March 2011. The only limitations on expression, and by extension collective forms of expression, is “adopting measures to criminalize incitement to imminent violence based on religion or belief.” [↑](#footnote-ref-115)
115. The Protest Principles, *op. cit.*, at Principle 4.3 [↑](#footnote-ref-116)
116. HR Committee, General Comment No. 34, *op. cit.*, at paras 50 – 52. [↑](#footnote-ref-117)
117. *Ibid.*, at paras 48 – 49. [↑](#footnote-ref-118)
118. No decisions by the HR Committee involve facts engaging both Articles 20(2) of the ICCPR and Article 21. [↑](#footnote-ref-119)
119. See, for example: HR Committee, Concluding Observations on Lithuania, CCPR/C/LTU/CO/3, 31 August 2012; Concluding Observation on Belgium, November 2010. [↑](#footnote-ref-120)
120. See: HR Committee, *Nikolai Alekseev vs Russian Federation,* *op. cit*. [↑](#footnote-ref-121)
121. The Rabat Plan of Action, *op. cit.*, at para. 29(c), explains how “incitement requires the activation of a triangular relationship between the object and subject of the speech act as well as the audience” [↑](#footnote-ref-122)
122. See, for example: Concluding Observations on Georgia, CCPR/C/GEO/CO/4, 19 August 2014, at para 8; Concluding Observations on Ukraine, CCPR/C/UKR/CO/7, 22 August 2013, paragraph 10. [↑](#footnote-ref-123)
123. Rabat Plan of Action, *op. cit.,* at para. 20: “In terms of general principles, a clear distinction should be made between three types of expression: expression that constitutes a criminal offence; expression that is not criminally punishable, but may justify a civil suit or administrative sanctions; expression that does not give rise to criminal, civil or administrative sanctions, but still raises concern in terms of tolerance, civility and respect for the rights of others.” [↑](#footnote-ref-124)
124. Hate Speech Toolkit, *op. cit.*, at pages 13 – 15. [↑](#footnote-ref-125)
125. This follows from the fact that there is no requirement that expression protected by Article 19(2) of the ICCPR be “peaceful”. ARTICLE 19 does not consider Article 21 to be *lex specialis* or a subset of the right to freedom of expression. Rather, both rights are often both engaged concurrently. [↑](#footnote-ref-126)
126. Rabat Plan of Action, *op. cit.,* at para. 29(c). [↑](#footnote-ref-127)
127. Rabat Plan of Action, *op. cit.*, at para 29, sets out the six-factor test, including reference to: context; speaker; intent; content and form; extent of the speech act; and, likelihood including imminence. [↑](#footnote-ref-128)
128. The rationale for this principle is consistent with and follows from the Committee’s view of blasphemy laws and historical denial laws, as set out in General Comment No. 34, notwithstanding the Committee has criticised States over the occurrence of assemblies displaying insignia or symbols historically associated with discrimination. By comparison, see ECtHR, *Vajnai v. Hungary*, 2008, at para 49. [↑](#footnote-ref-129)
129. Rabat Plan of Action, *op. cit.*, at para. 11. [↑](#footnote-ref-130)
130. Rabat Plan of Action, *op. cit.*, at paras. 35 – 59; HRC Resolution 16/18, *op. cit.*, at para 5.(a) – (e), (g) – (h). [↑](#footnote-ref-131)
131. See, by way of comparison, ECtHR, *Jersild v. Denmark*, Application No. 15890/89, 23 September 1994. [↑](#footnote-ref-132)
132. ARTICLE 19, “Hate Speech Explained: A Tool Kit”, 2015 edition, at pages 22 and 84 – 85; available at: <https://www.article19.org/resources/hate-speech-explained-a-toolkit/>. See also, Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, note 29, p. 487. [↑](#footnote-ref-133)
133. ARTICLE 19 cautions against adopting subjective language from regional bodies that implies degrees of “offensiveness” of “insult” are the appropriate measure for determining the harmful impact of expression and therefore imposing limitations. [↑](#footnote-ref-134)
134. Note of the Rapporteur, at question 4: “Does this in general terms mean that there is a duty on the State to ‘facilitate’ peaceful assembly, and what does such a duty to ‘facilitate’ entail? Does it mean that, while people exercise this right, the focus of law enforcement officials should be primarily on protecting the rights of all concerned rather than upholding law and order? (Are States thus required to show a certain level of tolerance to conduct when engaged in as part of peaceful assembly, and not meet it with the same force of the law as it would otherwise do?) How should the obligation to allow assemblies to take place within ‘sight and sound’ of its target audience be interpreted?” [↑](#footnote-ref-135)
135. In its Concluding Observations on the Republic of Korea, CCPR/C/KOR/CO/4, 3 December 2015, the Committee proclaimed, at para. 53, that “the State party should ensure that all persons enjoy the right to peaceful assembly.” See, also: Concluding Observations on Benin (2015): “the State party should promote freedom of peaceful assembly and association”; Concluding Observations on Serbia (2017), in which the Committee expressed concern “about aspects of the Public Assembly Act … that might hinder, not facilitate, protection of the right to freedom of assembly.” [↑](#footnote-ref-136)
136. Concluding Observations on Haiti, CCPR/C/HTI/CO/1, 21 November 2014, at para 19. [↑](#footnote-ref-137)
137. See, for example: Concluding Observations on China (Hong Kong), CCPR/C/CHN-HKG/CO/3, 29 April 2013, at para. 10 (the impact of mass arrests); Concluding Observations on China (Macau), CCPR/C/CHN-MAC/CO/1, 29 April 2013, at para. 16 (on the impact of authorities’ use of video cameras.) [↑](#footnote-ref-138)
138. Principle 11, State duties to facilitate the right to protest: States have a positive duty to ensure that everyone in their jurisdiction may exercise their right to protest. In particular, they should: a) Affirm that human rights protections apply in all protests, even where there are individual, sporadic or widespread acts of violence, or where circumstances necessitate specific and temporary restrictions on some aspects of the right to protest; b) Facilitate protests by taking reasonable and appropriate measures to enable protests to take place without participants fearing physical violence or violations of their human rights, while minimising disruption and the risk to the safety of those affected by a particular protest. States should be mindful that in some circumstances where a protest occurs in violation of applicable laws, law enforcement powers do not always have to be exercised and non-intervention might be the best approach; c) Actively protect protesters, alongside other people, against any form of threats and violence by those who wish to prevent, disrupt or obstruct protests, including agents provocateurs and counter-demonstrators; d) Ensure that groups at risk, given their particular vulnerabilities during certain protests, including women, children, members of minorities or persons with disabilities, as well as those monitoring or reporting on protests, are protected. The measures adopted in this respect, however, should not be misused to confirm harmful stereotypes, maintain discriminatory norms, values and practices, or restrict the ability of these groups to exercise their right to protest. Such measures should include, but not be limited to: i. holistic approaches to tackling discrimination against groups at risk, addressing the sources of discrimination and the comprehensive reform of applicable laws and procedures ii. immediate means of accessing redress and protection, including legal aid, for all individuals who suffer discrimination and violence; iii. public condemnation by officials of all form of harassment and violence committed against protesters who are members of groups at risk, and an express commitment to protect and respect the right to protest of these groups; iv. effective training for all officials and law enforcement officers in non-discrimination; this should be adequately resourced and include rigorous enforcement and monitoring. [↑](#footnote-ref-139)
139. Note of the Rapporteur, at Question 10: “To what extent have general rules and good practices emerged on the facilitation of assemblies, to prevent an escalation of the situation, for example by not taking measures that might increase tensions, requiring law enforcement officials to be identifiable, etc.? How should the division of labour between the police and marshals be determined?” [↑](#footnote-ref-140)
140. Protest Principles, *op. cit.*, at Principle 12. 1. [↑](#footnote-ref-141)
141. Protest Principles, *op. cit.*, at Principle 12.3 (b). See also: HR Committee, Concluding Observations on Kenya (August 2012), including specific directions for trainings on understanding crowd behaviour, and methods of persuasion and negotiation to minimize the use of force; HR Committee, Concluding Observations on Greece, CCPR/C/GRC/CO/2, 3 December 2015, at paras 41 – 42; HR Committee, Concluding Observations on Venezuela, CCPR/C/VEN/CO/4, 14 August 2015, at para. 14. [↑](#footnote-ref-142)
142. Protest Principles, *op. cit.*, at Principle 12.3 (c) [↑](#footnote-ref-143)
143. Protest Principles, *op. cit.*, at Principle 12.3 (e). See also HRC Resolution 38/11, *op. cit.*, at operative paragraph 5. [↑](#footnote-ref-144)
144. Protest Principles, *op. cit.*, at Principle 12.3 (d) [↑](#footnote-ref-145)
145. Protest Principles, *op. cit.*, at Principle 12.3 (f) and (g). On the visibility of police identification, see also, HR Committee, List of Issues Prior to the Review of Spain, November 2014. [↑](#footnote-ref-146)
146. Note by the Rapporteur, at question 11: “Can dispersal ever be justified where an assembly is entirely peaceful/non-coercive? What are the alternatives to dispersal?” [↑](#footnote-ref-147)
147. See, for example, HR Committee, Concluding Observations on Iraq, CCPR/C/IRQ/CO/5, 3 December 2015, at para 41. [↑](#footnote-ref-148)
148. HRC Resolution 38/11 on the promotion and protection of human rights in the context of peaceful protest [↑](#footnote-ref-149)
149. Protest Principles, *op. cit.*, at Principle 12.4 [↑](#footnote-ref-150)
150. HR Committee, Concluding Observations on Yemen, CCPR/C/YEM/CO/5, 23 April 2012, at para. 26; HR Committee, Concluding Observations on Uzbekistan, CCPR/C/UZB/CO/4, 17 August 2015. See also: ECtHR, *Bukta and others v. Hungary*, op. cit. [↑](#footnote-ref-151)
151. Joint report A/HRC/31/66, *op. cit.*, at para. 63. [↑](#footnote-ref-152)
152. Special Rapporteur on freedom of peaceful assembly and of association, country visit to the United Kingdom, A/HRC/23/39/Add.1, paras 36 – 38, and 93. Contrast ECtHR *Austin v. United Kingdom* (2012). [↑](#footnote-ref-153)
153. Protest Principles, *op. cit.*, at Principle 12.5 [↑](#footnote-ref-154)
154. Adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders Havana, Cuba, 27 August to 7 September 1990; in particular: Principles 5, 9, and 12 – 14. See reference to these, for example, in HR Committee, Concluding Observations on Sudan, CCPR/C/SDN/CO/4, 19 August 2014, at para. 22. [↑](#footnote-ref-155)
155. Adopted by the UN General Assembly in resolution 34/169 of 17 December 1979. [↑](#footnote-ref-156)
156. Joint report A/HRC/31/66, *op. cit.*, at paras. 50 – 67. [↑](#footnote-ref-157)
157. See positive reference to these materials in the preamble to Human Rights Council resolution 38/11, *op. cit.* [↑](#footnote-ref-158)
158. Concluding Observations on Sudan, CCPR/C/SDN/CO/4, 19 August 2014, at para. 22; Concluding Observations on Cambodia, CCPR/C/KHM/CO/2, 27 April 2015, at para. 12. [↑](#footnote-ref-159)
159. Concluding Observations on Russia, CCPR/C/RUS/CO/7, 28 April 2015, at para. 25; Concluding Observations on Sudan, CCPR/C/SDN/CO/4, 19 August 2014, at para. 22 [↑](#footnote-ref-160)
160. Concluding Observations on Canada, CCPR/C/CAN/CO/6, 13 Aug 2015, at para. 11. Concluding Observations on Malawi, CCPR/C/MWI/CO/1/Add.1, 19 August 2014, at para. 23. [↑](#footnote-ref-161)
161. *Op. Cit.* See, in particular, operative paragraphs 10 – 16. [↑](#footnote-ref-162)
162. Concluding Observations on the Republic of Korea, CCPR/C/KOR/CO/4, 3 December 2015, at para. 52. [↑](#footnote-ref-163)
163. Concluding Observations on China (Macao), CCPR/C/CHN-MAC/CO/1, 29 April 2013, Macao, at para 16.; Concluding Observations on China (Hong Kong), CCPR/C/CHN-HKG/CO/3, 29 April 2013, at para. 10; CCPR/C/CHN-MAC/CO/1 (29 April 2013) [↑](#footnote-ref-164)
164. Promotion and protection of the right to freedom of peaceful assembly, A/73/348, 29 August 2018; at para 38. [↑](#footnote-ref-165)
165. *Ibid.*, at para 63. [↑](#footnote-ref-166)
166. HRC Resolution 34/7 on “the right to privacy in the digital age”, A/HRC/Res/37/2, 4 April 2018, at operational paragraph 2. Numerous preambular paragraphs connect the right to privacy to the right of peaceful assembly. [↑](#footnote-ref-167)
167. Joint Declaration on Freedom of Expression and “Fake News”, disinformation, and propaganda, *op. cit.*, at 2(c) – (d). See also, Protest Principles, at Principle 18. [↑](#footnote-ref-168)
168. Joint report A/HRC/31/66, *op. cit.*, at paras. 86 and 88. [↑](#footnote-ref-169)
169. HRC Resolution 38/11, *op. cit.*, at operative paragraph 1. [↑](#footnote-ref-170)
170. Protest Principles, *op. cit.*, at Principle 16. [↑](#footnote-ref-171)
171. Note by the Rapporteur, at Question 12: “What are the rights of those who wish to observe and record assemblies and how they are policed, including participants, bystanders and the media?” [↑](#footnote-ref-172)
172. Protest Principles, *op. cit.*, at Principle 17. [↑](#footnote-ref-173)
173. Protest Principles, *op. cit.*, at Principle 18. [↑](#footnote-ref-174)
174. HR Committee, Concluding Observations on the Republic of Korea, CCPR/C/KOR/CO/4, 3 December 2015, at para. 52; HR Committee, Concluding Observations on Djibouti, CCPR/C/CJI/CO/1, 19 November 2013, at para. 12; HR Committee, Concluding Observations on Haiti, CCPR/C/HTI/CO/1, 21 November 2014, at para. 19 [↑](#footnote-ref-175)
175. Joint report A/HRC/31/66, *op. cit.*, at paras. 68 – 72. [↑](#footnote-ref-176)
176. HRC Resolution 38/11, *op. cit.*, at operative paragraph 8, bearing in mind the HRC recognizes the right to monitor assemblies as integral to the right of peaceful assembly. [↑](#footnote-ref-177)
177. Protest Principles, *op. cit.*, at Principle 19. [↑](#footnote-ref-178)