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**Submission to the Human Rights Committee**

**For the**

**Half Day General Discussion on Article 21**

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*The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.*

*The Carter Center’s Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 100 elections in 39 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democracy Program has led initiatives to develop a rights based approach to election observation, to build consensus on standards for democratic elections based on international human rights law, and to support coordination between the human rights and election communities. This submission also reflects input from colleagues at Meedan.org.*

The right to freedom of peaceful assembly, articulated in Art. 21 of the *International Covenant on Civil and Political Rights* (ICCPR),[[1]](#footnote-1) is inextricably linked to the right to participate in public affairs, including through electoral processes.[[2]](#footnote-2) As the Human Rights Committee noted in General Comment 25, “Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote…”[[3]](#footnote-3) Without freedom of peaceful assembly, the ability of voters, candidates, political parties and civil society to effectively communicate, and share political ideas and messages would be limited and thus the rights enshrined in article 25 would also be undermined.[[4]](#footnote-4) The Special Rapporteur on Freedom of Assembly and Association, in his 2013 report on elections, stressed that elections in which freedom of assembly (and freedom of association) are restricted should not be considered “genuine.”[[5]](#footnote-5)

Several international instruments and Guideline documents provide definitions for freedom of assembly, as well as the obligations (both positive and negative) on the State to protect this freedom. *The African Union Guidelines on Freedom of Association and Assembly in Africa*, for example, list 10 ‘fundamental principles’ for the protection of freedom of assembly. These include: (1) presumption in favor of the right; (2) creation and maintenance of an enabling framework; (3) political and social participation of an independent civil society; (4) human rights compliance; (5) impartiality of governance agencies; (6) simple, transparent procedures; (7) reasoned decisions and judicial review; (8) limited sanctions; (9) the right to remedy; and (10) erring on the side of the most protective standard.[[6]](#footnote-6) Further, the *Guidelines* make clear that any restrictions on freedom of assembly and other rights must meet the tests of legality, necessity, and proportionality. [[7]](#footnote-7)

The principles, above, elucidated by the Human Rights Committee, the African Union and others, are fundamental for the enjoyment of freedom of peaceful assembly. While these principles are fundamental at any and all times, The Carter Center - with experience observing more than 100 elections in 39 countries worldwide – believes that election periods are uniquely important political and social contexts, during which the obligations of the State may be heightened. This short document, submitted in support of the Human Rights Committee’s efforts to draft a new General Comment on Art. 21 of the ICCPR underscores how elections are uniquely important moments for political participation, and hence create greater expectations on the part of duty bearers with regard to the protection of freedom of assembly.

**Restrictions on Freedom of Assembly Around Elections**

As outlined in Article 21 of the ICCPR, no restrictions may be placed on the right to peaceful assembly other than those imposed in conformity with the law and that are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. The Human Rights Committee, in views related to Art. 21, has been clear that any restrictions must meet the criteria above. In addition, the Human Rights Committee has indicated that it was also a responsibility of the State to provide an explanation of why the restriction is necessary, and that the State must be “guided by the objective to facilitate the right, rather than seeking unnecessary or disproportionate limitations to it.”[[8]](#footnote-8) These principles are also reflected in the AU Guidelines.

In the context of elections, the Special Rapporteur on Freedom of Assembly and Association has noted that although the right to peaceful assembly is central to the enjoyment of the right to participate in public affairs, all too often assembly is subject to restrictions that do not meet the test laid out above. He argues that at times, restrictions are used to stifle critics or to silence political opposition.[[9]](#footnote-9) In some cases, a number of individually legitimate restrictions on freedom of peaceful assembly may have the cumulative effect of undermining the right and effectively narrowing civic space. Based on it’s election observation experience, and recognizing the role that elections should play in enabling political participation, The Carter Center agrees with the Special Rapporteur that during elections, spontaneous peaceful assemblies should be more tolerated and that greater efforts should be made by the state to allow, protect and facilitate peaceful assemblies, simultaneous peaceful assemblies and peaceful counterdemonstrations.[[10]](#footnote-10)

Notwithstanding the above, we note that it is generally accepted practice in many countries to prohibit campaign events and large demonstrations on election day and/or around polling stations in order to protect the right of voters to express their will free from interference or influence.

**Non-discrimination and Impartiality in Decision-Making**

Articles 2 and 21 of the ICCPR, when read together, protect enjoyment of the right to freedom of peaceful assembly free from distinction of any kind based on prohibited grounds, including on the basis of political or other opinion. However, in his 2013 report the Special Rapporteur on Freedom of Assembly and Association noted “the inclination of actors in the electoral contest to exploit racial, ethnic, religious, political, national or social origin, among other distinctions explicitly prohibited in article 2 of the International Covenant on Civil and Political Rights, with a view to excluding opponents. He [the Special Rapporteur] emphasizes that these rights are guaranteed for everyone on the basis of equality and that States therefore have the obligation to offer effective protection against discrimination.”[[11]](#footnote-11)

In this regard, the impartiality of decision-making authorities is critically important as it relates to issues of nondiscrimination and restrictions of the freedom of peaceful assembly. Impartiality is a cornerstone of trust and public confidence in electoral processes. Where impartiality of decision-making authorities is lacking or unclear, trust in elections can falter. The need for impartiality in decision making regarding freedom of assembly is especially important in the context of elections where stakeholders’ concerns about partisanship and the need for a level playing field may already be heightened. To increase perceptions of impartiality, decision making authorities should give equal treatment to all electoral stakeholders regarding freedom of peaceful assembly and should take extra measures to ensure that the reasoning of their decisions is clear, transparent and publicly available. In addition, equal treatment should be given to all assemblies with regard to facilitation of the event, and the safety and security of those involved.

**Freedom of Peaceful Assembly and Electoral Processes**

Elections are not single events, but rather a cycle of interwoven processes that occur before, during and after voting day.[[12]](#footnote-12) While some aspects of the electoral process are essentially ongoing at all times, others are timebound and have clear deadlines.

A pertinent example would be that of established and fixed campaign periods during which candidates and political parties are able to hold rallies and communicate their message to the electorate. Campaign periods - those formally established by law, as well as broader periods around elections during which it is to be expected that political participation will be heightened - create additional burdens on duty-bearers to respond promptly to issues related to freedom of peaceful assembly.

At the same time, as the Special Rapporteur noted, it may be reasonable for State authorities to establish prior notification procedures to facilitate the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others.[[13]](#footnote-13) In the context of electoral processes, it is essential that the notification procedures are not overly burdensome (see above regarding restrictions) and that any decisions regarding proposed peaceful assemblies be taken quickly so that the right to assembly is not undermined.

Organizers and participants in peaceful assemblies have a right to remedy if their rights are infringed. As the AU Guidelines point out, the remedy should include facilitation of future assemblies as necessary. In the context of election processes, an effective and timely remedy may require that the future assembly occurs in close temporal proximity to the requested time, and should not be delayed until the political moment has passed, or when the campaign period is over.

**Freedom of peaceful assembly and the broader electoral environment**

There are periods in the lead up to and immediately after voting day, when peaceful assemblies (campaign rallies, or other demonstrations or events) will be more frequent. This may correspond with periods of heightened political tension, especially if the elections are high stakes or closely contested. Duty bearers may need to take additional measures to ensure that authorities (e.g. security forces) are trained on human rights and the need for restraint when responding in the context of peaceful assemblies.

**Freedom of assembly in online spaces**

The Human Rights Council, in resolution 24/5 reiterated the important role of new information and communications technologies on the right to freedom of peaceful assembly and reminded all States of their obligation to protect rights both online and off.[[14]](#footnote-14)

While the Special Rapporteur on Freedom of Assembly Association’s next report, which will focus on peaceful assembly online, will no doubt provide useful context and analysis on this topic, we would note the following points:

* *The definition of freedom of peaceful assembly in online spaces poses unique challenges.* Unlike physical assemblies, which occur in finite and recognizable geographical spaces, online assemblies are more difficult to delineate, but can be bounded by various means that identify participation in specific virtual spaces. These could include, for example, the use of specific hashtags, engagement on thematic Facebook pages, or even comment streams under a video. Digital public space and assembly arguably includes everyone who is permissioned to take part in a given conversation.
* *Harassment and hostile online environments can create a chilling effect, and may violate the freedom of peaceful assembly.* In online contexts, where harassment (particularly of women and minorities) is rampant, the right to assembly may be harmed, and potentially violated, by hate speech or other threatening speech, which infringe on the right to ‘assemble’ and ‘speak’ or publish on the public web. The role of privately-owned platforms in enabling the enjoyment of the right of peaceful assembly poses especially difficult issues in this regard. The platforms should work closely with national bodies to ensure that their practices are fully consistent with international obligations regarding the right to peaceful assembly.
* *Internet shut-downs are equivalent to blanket bans.* The African Union Guidelines state that the blanket application of restrictions should only be applied as a last resort, where the ban in question complies with the principle of proportionality. We would argue that internet shut-downs, where all online, peaceful assembly is curtailed, is equivalent to a blanket ban and would constitute a violation of art. 21 of the ICCPR.

1. “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” [↑](#footnote-ref-1)
2. For the purposes of this paper we define freedom of assembly as an intentional and temporary gathering in a private or public space for an expressive purpose. We note that assemblies may also take place through the use of online platforms. For this definition we draw from the Report of the Special Rapporteur on rights to freedom of peaceful assembly and association, A/HRC/20/27, (21 May 2012) para. 24, and the AU Guidelines on Freedom of Association and Assembly in Africa, para. 3. [↑](#footnote-ref-2)
3. United Nations Human Rights Committee, *General Comment No. 25: the right to participate in public affairs, voting rights and the right of equal access to public services (Art. 25),* CCPR/C/21/Rev.1/Add.7, para. 12 [↑](#footnote-ref-3)
4. *Ibid*, para. 25. See also, Human Rights Committee, *Leonid Sudalenko v Belarus*, (17 April 2007), Communication No. 1992/2010. [↑](#footnote-ref-4)
5. OHCHR, Report of the Special Rapporteur on rights to freedom of peaceful assembly and association, A/68/299 (7 August 2013), para. 7 [↑](#footnote-ref-5)
6. African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly in Africa*, p. 8. These principles are also outlined in various views of the Human Rights Committee. [↑](#footnote-ref-6)
7. *Ibid,* p. 27. [↑](#footnote-ref-7)
8. Human Rights Committee, Valentin Evrezov v Belarus, 15 July 2015, Communication 1988/2010. [↑](#footnote-ref-8)
9. Report of the Special Rapporteur, A/68/299, para. 14. See also the report of the Special Rapporteur, A/HRC/38/34 (26 July 2018), para. 66 – 73. [↑](#footnote-ref-9)
10. *Report of the Special Rapporteur, A/68/299*, paras. 23-24. [↑](#footnote-ref-10)
11. Report of the Special Rapporteur, A/68/299, para. 15. [↑](#footnote-ref-11)
12. ACE Electoral Knowledge Network, ‘The Electoral Cycle,’ <http://aceproject.org/electoral-advice/electoral-assistance/electoral-cycle> accessed 26 February, 2019. [↑](#footnote-ref-12)
13. Report of the Special Rapporteur, A/HRC/20/27, para. 28 [↑](#footnote-ref-13)
14. Human Rights Council, Resolution on the rights to freedom of peaceful assembly and association, A/HRC/RES/24/5. [↑](#footnote-ref-14)