IOM’s comments and observations on the Human Rights Committee’s Revised Draft General Comment No. 37 on ICCPR Article 21 (Right of Peaceful Assembly)

1. **Introduction**

The Human Rights Committee has invited submissions by interested stakeholders to inform its draft General Comment No. 37, which addresses the Right of Peaceful Assembly under Article 21 of the International Covenant on Civil and Political Rights (“the Convention”).

The International Migration Law Unit (IML Unit) of the International Organization for Migration (IOM) is pleased to provide its comments and observations in this regard.

1. **IOM Mandate and Activities in the Area of Migration**

Established in 1951, IOM is the only inter‐governmental organization exclusively focused on migration. IOM works towards orderly and humane migration by delivering people‐centered services and advocating for the well‐being of migrants and their families. IOM’s mandate allows it to work with migrants, refugees, displaced persons and others in need of migration services or assistance,[[1]](#footnote-1) including concerned communities.

The primary responsibility for ensuring the respect of the human rights of migrants lies with States. A State has the duty to protect the human rights of all persons subject to its jurisdiction, nationals and non-nationals alike, whether they are in a regular or irregular migration situation, as well as stateless persons. International actors, including IOM, have a supporting role to play in helping States achieve effective respect for the human rights of migrants.

Concern for the dignity and well‐being of migrants has been present in IOM constituent documents since the Organization’s inception. In 2004, IOM Member States endorsed the consolidation of the International Migration Law and Legal Affairs Department in order to streamline and strengthen IOM’s involvement in International Migration Law (IML). IML is the set of legal rules that constrain, regulate, and channel state authority over migration. The IML Unit of IOM is entrusted with the responsibility to: research and disseminate information on Migration Law; provide training and capacity building on IML for government officials, civil society groups, international governmental organizations, non‐governmental organizations (NGOs) and IOM staff; and provide advice on whether existing national legislation complies with international legal standards and other legal advice or opinions on topics related to IML. IOM strongly believes in and applies a rights-based approach in migration programming. It also strives to promote the rights of migrants through advocacy and to contribute to their protection.

1. **General Observations**

IOM welcomes the considerable efforts by the Human Rights Committee to develop this comprehensive draft General Comment and the contribution this document promises to make to State Parties’ implementation of Article 21 of the Convention, and consequently, to the enjoyment of the Right to Peaceful Assembly by all individuals. The present submission serves primarily to suggest some areas where additional elaboration from the Committee regarding the scope of Article 21 could further contribute specifically to promoting respect for the human rights, dignity, and well‐being of migrants.

*Non-Discrimination Against Migrants with Respect to the Right of Peaceful Assembly*

IOM welcomes the explicit recognition in paragraph 5 of the draft General Comment, which states that everyone can exercise the right of peaceful assembly, “including migrant workers, asylum seekers and refugees, as well as stateless persons,” a position that is consistent with the Committee’s prior General Comment 15 on the “Position of Aliens Under the Covenant.”[[2]](#footnote-2) IOM also welcomes the recognition in paragraph 28 of the draft General Comment that States must not deal with assemblies in a discriminatory manner, and the inclusion in this context of “nationality” in its non-exhaustive list of non-discrimination grounds. We would suggest that “migration status” and “citizenship status” also be included in the list in paragraph 28 to make abundantly clear, consistent with such recognition in paragraph 5, that irregular migrants and stateless individuals similarly cannot be discriminated against in the enjoyment of their right of peaceful assembly. This clarification is important given that certain States continue to have laws with discriminatory provisions, including formal prohibitions on assembly by non-citizens.[[3]](#footnote-3)

*Protection of Migrants from Reprisals for Exercising their Right of Peaceful Assembly*

The exercise of the right of peaceful assembly, and the related rights of association and expression, hold particular significance for migrants who are often denied the right to vote in the countries in which they live, as well as in the countries they have left behind, and are therefore excluded from a crucial opportunity to influence decision-makers on issues that directly affect their lives.[[4]](#footnote-4) To that end, we welcome the Committee’s recognition in paragraph 2 of the draft General Comment of the importance of the right to “marginalized and disenfranchised members of society.” Nevertheless, as highlighted in a recent report by Civicus, migrants and refugees often face unique challenges in exercising the right of peaceful assembly, and related expression rights, including direct or perceived threats of deportation, detention, or other reprisals, which deter their participation.[[5]](#footnote-5) For example, human rights stakeholders have expressed concern regarding states targeting migrant human rights defenders for detention or deportation as a consequence of their activism.[[6]](#footnote-6) Such entities have also raised concern about the activities of associations and individuals helping and supporting undocumented migrants being criminalized.[[7]](#footnote-7)

To this end, IOM would propose that the Committee consider including in this draft a more direct elaboration of the contours of the right to peaceful assembly in relation to reprisals against migrants and prospective migrants. Specifically, the Committee might address whether State Parties may, consistent with Article 21, target migrants present within its borders for immigration enforcement actions, including detention or deportation, as a consequence of their participation in peaceful assemblies (such as those protesting government policies), revoke their lawful residency, refugee or asylum status on the basis of their participation in such peaceful demonstrations, or deny migrants’ applications for immigration benefits (such as to renew a visa or to naturalize) on the basis of such participation. The Committee may also wish to address the similar questions that might arise in the entry context, such as whether, consistent with Article 21, State Parties may choose to restrict entry of migrants (for example, by denying visas), in whole or in part, as a consequence of their participation or anticipated participation in peaceful assemblies expressing views that the State does not support. Any such measures undoubtedly affect migrants’ willingness and ability to exercise their right of peaceful assembly. This discussion should also be tied into the privacy and collection of information issues that are addressed in paragraphs 71-72 of the draft General Comment, as the collection of information on demonstration participants is precisely what could facilitate its use for the chilling enforcement purposes discussed here.

To tackle these questions, the Committee would need to address whether enforcement actions taken by States against migrants as a consequence of their participation in peaceful assemblies constitute de facto “restrictions” on the exercise of this right, and if so, if such restrictions could be considered “necessary in a democratic society in the interests of national security” or otherwise acceptable, consistent with the restrictions permitted under Article 21. A similar analysis should be applied to actions, such as criminalization, that serve to deter individuals from organizing in support of or otherwise helping undocumented migrants.[[8]](#footnote-8)

*Facilitating Migrants’ Exercise of the Right of Peaceful Assembly*

In addition to the fear of reprisals, another obstacle to migrants’ exercise of the right of peaceful assembly, and related rights, as identified in recent reporting, is (1) the perception that police do not do enough to protect them when they protest; and (2) a lack of knowledge among migrants of their rights to peacefully assemble and express their views.[[9]](#footnote-9) To address these hurdles, we would welcome the inclusion of additional guidance from the Committee on measures that States should take to facilitate the exercise of this right by migrants. For example, with respect to the protection issue, the Committee might consider including, in the context of paragraph 28, xenophobic and racist attacks (in addition to homophobic, sexual or gender-based attacks) as among the types of attacks that States have a duty to protect assembly participants from. The importance of protecting protesters, including from xenophobic and racist acts, should also be emphasized in Section 6 on the “Duties and powers of law enforcement agencies.” Such protective measures could further serve to facilitate migrants’ enjoyment of the right of peaceful assembly. With respect to information, the Committee might consider specifying measures that States should take to ensure that migrants, particularly those with linguistic barriers, and members of other often-marginalized and disenfranchised groups, are fully aware of and informed about their rights of peaceful assembly.

1. **Conclusion**

IOM is grateful for the opportunity to provide its comments and observations on this draft General Comment on the Right of Peaceful Assembly. We look forward to the finalization of this document, and its contributions to maximizing respect for the rights of all, including migrants.

1. *See* the IOM Constitution. [↑](#footnote-ref-1)
2. CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986 (referencing and elaborating upon the “general rule [] that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens”). [↑](#footnote-ref-2)
3. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/26/29, 14 Apr. 2014, at para. 22-23, 37 (“SRapp Kiai Report”). [↑](#footnote-ref-3)
4. Civicus, Freedoms on the Move: The Civic Space of Migrant Workers and Refugees (Oct. 2019), *available at* <https://www.business-humanrights.org/sites/default/files/documents/freedoms-on-the-move-report_oct2019.pdf> (“Civicus Report”); *see also* S. Rapp. Kiai Report, *supra* n. 3 at para. 25 (emphasizing that precisely because international law allows for some citizenship-related limitations on certain political rights that “States should ensure that migrants are not stripped of other fundamental rights, particularly assembly rights” as they “have an even greater need for alternative means to participate in the public sphere”). [↑](#footnote-ref-4)
5. Civicus Report, *supra*n. 4. [↑](#footnote-ref-5)
6. *See, e.g.,* Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clement Voule, A/HRC/38/34, 26 July 2018 at para. 64 (“SRapp Voule Report”); SRapp Kiai Report, *supra* n. 3 at para. 47; Report of the Special Rapporteur on the situation of human rights defenders Michel Forst, A/HRC/37/51, 16 Jan. 2018, at para. 28 (SRapp Forst Report); SRapp Forst, World Report on the Situation of Human Rights Defenders, December 2018, at p. 194. [↑](#footnote-ref-6)
7. *See, e.g.,* SRapp Voule Report, *supra* n. 6, at para. 79, SRapp Forst Report, *supra* n. 6 at 54. [↑](#footnote-ref-7)
8. Beyond the specific migrant context, IOM would submit that further clarification and/or elaboration from the Committee would be beneficial in providing practical and specific guidance to States on the scope of permissible restrictions in Section 4 of the draft General Comment, as this section is currently quite general. In particular, it would be helpful to include more examples of the types of restrictions on the exercise of the right to peaceful assembly on grounds of national security, public safety, etc. which *should* be considered legitimate and proportionate, and which should not, in order to better guide States in fully implementing Article 21. [↑](#footnote-ref-8)
9. Civicus Report, *supra* n.4 at pp. 6-9, 25-36. [↑](#footnote-ref-9)