

PRESENTED TO

UN HUMAN RIGHTS COMMITTEE

## SUBMISSION

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# Draft General Comment No. 37 (Right of Peaceful Assembly)

## Introduction

ICNL is grateful for the opportunity to provide comments on the revised draft General Comment No. 37 on Article 21 (right of peaceful assembly) of the International Covenant on Civil and Political Rights (ICCPR). Please find below principal comments relating to the following issues of general significance:

- (1) the definition of “assembly”;
- (2) assemblies through digital means;
- (3) authorization and notification requirements;
- (4) use of force in the context of assemblies; and
- (5) the fundamental nature of peaceful assembly rights.

Accompanying these principal comments, we have attached a marked-up version of General Comment No. 37 which addresses the text of the Comment in greater detail, indicating proposed edits (including edits on a number of specific or technical issues not raised in our principal comments) and rationales for these edits. We hope the Committee will find these comments helpful in its review of the draft Comment.

## Principal Comments

### 1. THE DEFINITION OF “ASSEMBLY”

The conception of “assembly” set forth in the draft General Comment, at paras. 4 and 13, is limited to gatherings of persons with a common expressive purpose in a publicly accessible place. In our view, this conception omits historically and currently important forms of assembly that require protection against restrictions, while also

leaving insufficient room to encompass evolving and future forms of assembly. We would recommend clarifying that the protections of article 21 apply to gatherings where the participants intend to engage in important civic activities other than common expression; to gatherings in private, non-publicly-accessible places; and to gatherings “by persons,” in various forms, rather than “of persons”.

**Paragraph 4** of the draft General Comment states: “The right of peaceful assembly protects the non-violent gathering of persons with a common expressive purpose in [a publicly accessible / the same] place.” We would recommend that para. 4 instead state: “The right of peaceful assembly protects the non-violent, intentional and temporary gathering by persons for a specific purpose in a public or private place.” This revised text would address the concerns noted above while closely following the definition of “assembly” offered in prior UN guidance on the proper management of assemblies.<sup>1</sup>

- *To protect peaceful gatherings aimed at the outward expression of heterogeneous viewpoints, internal deliberation, or other, non-expressive purposes, we would recommend that “with a common expressive purpose” be replaced with “for a specific purpose.”*

Paragraph 4 currently confines assemblies to gatherings of “persons with a common expressive purpose.” This would appear to exclude gatherings where the participants have differing expressive purposes – for instance, a demonstration in which protesters voice different messages. If, to take the simplest case, two individuals decide to march together, with one holding a sign urging action on climate change while the other holds a sign advocating restrictions on immigration, this would not appear under the proposed language in para. 4 to be protected by the right of peaceful assembly, though it is not clear why the variety of messages expressed should by itself disqualify the gathering from protection. The proposed language may encourage authorities to impose restrictions on gatherings by social movements or other loosely organized, and hence heterogeneous, groupings. We do not see a benefit in importing an inquiry into the commonality of expression into the scope of protection of art. 21.

The draft language in para. 4 not only excludes from protection outward-facing gatherings characterized by heterogeneous messages – such as marches of ideologically diverse protesters – but also inward-facing gatherings aimed not at conveying a message to others, but at deliberation amongst the participants. Yet such gatherings have formed a core part of the historical conception of assembly. Baylen J. Linnekin has noted that in the United States, for example, constitutional protections

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<sup>1</sup> See *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* (“2016 UNSR Joint Report”), A/HRC/31/66, at para. 10 (“An ‘assembly’, generally understood, is an intentional and temporary gathering in a private or public space for a specific purpose.”).

for assembly were drafted against a backdrop where “[t]averns were the fundamental centers of colonial assembly,” hosting “a thoroughly constitutional mishmash of vital discourse between and among Americans.”<sup>2</sup> The first draft of the First Amendment to the U.S. Constitution thus specifically protected assemblies aimed at internal deliberation: “The freedom of speech and of the press, and the right of the people peaceable [sic] to assemble *and consult for their common good*, and to apply to the Government for redress of grievances, shall not be infringed.”<sup>3</sup> Though the reference to consultation was not retained in the First Amendment as adopted, internal deliberation remained a core component of the right of assembly in American jurisprudence. As the Supreme Court of the United States explained in 1939, “it is clear that the right peaceably to assemble and to discuss these topics, and to communicate respecting them, whether orally or in writing, is a privilege inherent in citizenship of the United States which the [First] Amendment protects.”<sup>4</sup> The draft General Comment itself, when it states at para. 6 that “[p]eaceful assemblies may take many forms, including ... meetings,” appears to recognize that gatherings for purposes of internal deliberation may constitute assemblies protected under article 21.

In fact, historical conceptions of protected assemblies have extended not only to gatherings for the purposes of outward expression and internal deliberation, but to gatherings for non-expressive purposes, as well. In the United Kingdom, the right of peaceable assembly could historically be exercised with or without an expressive purpose, as a respected treatise explained in 1859: “A meeting may assemble by the spontaneous act of any portion of the people. The Constitutional right is undoubted; all that the law requires is that the meeting assemble peaceably, for the purpose of exercising the Constitutional right, and that it be conducted without any violence, leading to a breach of the peace.”<sup>5</sup> John Inazu has noted that in the course of the American women’s suffrage movement in the early 1900s, “[w]omen’s assemblies were not confined to traditional deliberative meetings but included banner meetings, balls, swimming races, potato sack races, baby shows, sharing of meals, pageants, and teatimes,” which furthered “networking and personal connection at the local level.”<sup>6</sup>

This broader conception of assembly, encompassing gatherings for internal deliberation and non-expressive purposes, informed the first draft of the ICCPR, which included the following language at art. 18: “All persons shall have the right to

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<sup>2</sup> Baylen J. Linnekin, “Tavern Talk” & the Origins of the Assembly Clause: Tracing the First Amendment’s Assembly Clause Back to its Roots in Colonial Taverns at 23 (2011), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1735069](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1735069).

<sup>3</sup> James A. Jarrett & Vernon A. Mund, *The Right of Assembly*, 9 N.Y.U. L.Q. REV. 1, 35 (1932) (emphasis added).

<sup>4</sup> *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 512 (1939).

<sup>5</sup> Jarrett & Mund at 4.

<sup>6</sup> John D. Inazu, *The Forgotten Freedom of Assembly*, 84 TULANE L. REV. 565, 591 (2010).

assembly peacefully *for any lawful purpose including the discussion of any matter* on which, under Article 17, any person has the right to express and publish his ideas.”<sup>7</sup>

Gatherings taking place for purposes of internal deliberation, or for non-expressive purposes, have been subject to restriction and thus require protection under art. 21. In the pre-Civil War United States, southern states imposed manifold restrictions on meetings, prohibiting slaves – and in some instances free persons of color – from assembling “on pretense of feasting,” for “mental instruction or religious worship,” at night, for learning reading or writing, or to hold meetings.<sup>8</sup> These prohibitions were in some instances explicitly denominated as restrictions on “unlawful assembly.”<sup>9</sup> In apartheid-era South Africa, the Internal Security Act, 1982 provided for “banning”, whereby the Minister of Law and Order could prohibit particular suspect persons from “attending any gathering; or any particular gathering or any gathering of a particular nature, class or kind.”<sup>10</sup> And in August 2019, in Srinagar, a ban was imposed on all public meetings of more than four people following moves by the Indian government to strip Kashmir of its autonomy and statehood.<sup>11</sup> Of note, both the 18th century restriction on meetings by slaves and persons of color in the U.S., and the restrictions on meetings by specific persons under apartheid in South Africa, applied to meetings in public and private places. We take up this point in greater detail below.

- *To reflect the historical and continuing importance of gatherings in private, non-publicly-accessible places, and to make clear that the protections of art. 21 extend to such gatherings, we would recommend that “in [a publicly accessible / the same] place” be replaced with “in a public or private place.”*

Paragraph 4 currently states that an assembly may only be held in “a publicly accessible” place. This would appear to exclude gatherings in private, non-publicly accessible locations, such as private homes or halls specifically rented for a gathering. But gatherings in such locations have played an important role in the history of peaceful assembly and are entitled to protection under article 21.

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<sup>7</sup> Report of the Third Session of the Commission on Human Rights (28 June 1948) at 31-32 (emphasis added), available at [https://www.un.org/ga/search/view\\_doc.asp?symbol=E/800](https://www.un.org/ga/search/view_doc.asp?symbol=E/800).

<sup>8</sup> Inazu at 582-84.

<sup>9</sup> *Id.* at 583 n.87.

<sup>10</sup> See Internal Security Act, 1982, § 20, available at [https://en.wikisource.org/wiki/Internal\\_Security\\_Act,\\_1982#c3](https://en.wikisource.org/wiki/Internal_Security_Act,_1982#c3). Persons who could be subject to banning included those convicted of offenses considered to endanger the security of the state or the maintenance of law and order, but also persons determined by the Minister to have “engag[ed] in activities which endanger or are calculated to endanger the security of the State or the maintenance of law and order,” or which were “causing, encouraging or fomenting ... feelings of hostility between different population groups.”

<sup>11</sup> Washington Post, “Pushed to the wall’: Protests erupt in Kashmir over Indian move to end autonomy,” Aug. 9, 2019.

In the 19th century and early 20th centuries, civic gatherings in the United Kingdom and United States often took place in rented private halls, including meetings of the abolitionist and labor rights movements.<sup>12</sup> Laura Lyytikäinen has observed that in the Soviet Union, “many of the dissident activities happened in people’s private homes,” with “[m]any dissident women host[ing] meetings in their flats.”<sup>13</sup> The Charter 77 movement in the former Czechoslovakia similarly grew out of “conspiratorial meetings” of the Chartists, including a January 3, 1977 meeting at Václav Havel’s apartment at which those assembled discussed the collection of signatures and responses to interrogation.<sup>14</sup> And there is a long history, from Spain to Saudi Arabia, of organizing private movie showings to evade general or specific bans on films.<sup>15</sup>

Restrictions on private meetings have a long history continuing to the present day, as well. Authorities in the United Kingdom and the United States resorted to a variety of methods to restrict gatherings in private halls, from revocation of licenses held by meeting halls willing to rent to disfavored groups, to discriminatory issuance of permits to meet in such halls, to the outright barring of certain gatherings.<sup>16</sup> Seventeenth-century English authorities barred assembly “in any place”, either public or private, by “five persons or more ... over and above those of the same Household” “under colour or pretence of any Exercise of Religion in other manner then [sic] is allowed by the Liturgy or practice of the Church of England.”<sup>17</sup> This prohibition has its echoes in modern restrictions in Cuba and China on the use of private residences as places of collective worship.<sup>18</sup> Reports suggest that Ugandan authorities have recently

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<sup>12</sup> See Jarrett & Mund at 21; Inazu at 586.

<sup>13</sup> Laura Lyytikäinen, *Performing Political Opposition in Russia* at 33 (Routledge: New York, 2016).

<sup>14</sup> The National Security Archive, *Charter 77 After 30 Years*, available at <https://nsarchive2.gwu.edu/NSAEFB/NSAEFB213/index.htm>.

<sup>15</sup> See, e.g., Daniel Sanchez-Salas, “Film/Cinema (Spain)” (2017), *International Encyclopedia of the First World War*, available at [https://encyclopedia.1914-1918-online.net/article/filmcinema\\_spain](https://encyclopedia.1914-1918-online.net/article/filmcinema_spain); Reuters, “Saudi cinema launch ends decades-old ban, public screenings start Friday” (Apr. 18, 2018), available at <https://www.reuters.com/article/us-saudi-cinema/saudi-cinema-launch-ends-decades-old-ban-public-screenings-start-friday-idUSKBN1HP235>.

<sup>16</sup> *Public Order and the Right of Assembly in England and the United States: A Comparative Study*, 47 YALE L.J. 404, 421 (1938).

<sup>17</sup> See Charles II, 1664: *An Act to prevent and suppress seditious Conventicles*, available at <https://www.british-history.ac.uk/statutes-realm/vol5/pp516-520>.

<sup>18</sup> See, e.g., U.S. Department of State, *2018 Report on International Religious Freedom: Cuba* (“According to CSW’s annual report, authorities continued to rely on two 2005 government resolutions to impose complicated and repressive restrictions on house churches.”), available at <https://www.state.gov/reports/2018-report-on-international-religious-freedom/cuba/>; U.S. Dep’t of State, *2018 Report on International Religious Freedom: China* (“Although SARA said family and friends had the right to worship together at home – including prayer and Bible study – without registering with the government, authorities still regularly harassed and detained small groups that did so.”), available at <https://www.state.gov/reports/2018-report-on-international-religious-freedom/china-includes-tibet-xinjiang-hong-kong-and-macau/>.

imposed restrictions upon “public meetings” occurring in private homes, with “public meetings” defined to include any “meetings in the public interest.”<sup>19</sup>

The understanding that assemblies encompass meetings in private places is underlined by the drafting history of the ICCPR. In comments on the draft assembly provision quoted above, the Government of the Netherlands suggested “[t]hat a clause be added making public meetings subject to official authorization.”<sup>20</sup> The introduction of a specific clause regarding public meetings would make sense only if “the right to assembly peacefully” in draft art. 18 was understood to encompass both public and private gatherings. Regional institutions have advanced the same understanding. The European Court of Human Rights has stated that “[t]he right to freedom of assembly covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions,”<sup>21</sup> and the ACHPR Guidelines on Freedom of Association and Assembly in Africa emphasize that “[t]he right to freedom of assembly applies to meetings on private as well as public property.”<sup>22</sup>

- *To make clear that art. 21 protects evolving forms of assembly, we would recommend that “gathering of persons” be replaced by “gathering by persons.”*

A third concern is that the proposed language in para. 4, by limiting assemblies to “gathering[s] of persons,” fails to leave sufficient room for forms of assembly which are currently evolving or which may become prevalent in the near future.

The draft Comment recognizes, at para. 15, that individuals are engaging in “acts of collective expression through digital means, for example online.” We agree that important forms of assembly are now taking place in digital spaces, including gatherings on Twitter feeds and Facebook walls, in chat rooms and community listservs, and through Skype or Zoom calls. New forms of digitally-mediated assemblies are becoming more prominent, as well. In 2015, activists convened the world’s first political protest by hologram in Madrid, in which projected holograms made “[h]ordes of demonstrators seem[] to appear on the street ... in wispy, flickering white forms.”<sup>23</sup> A year later, Amnesty International organized a holographic “ghost protest” in Seoul after protesters were denied permission to hold a live rally.<sup>24</sup> And

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<sup>19</sup> See, e.g., SoftPower News, “We Didn’t Ban Meetings in Private Homes – Police,” January 13, 2020, available at <https://www.softpower.ug/we-didnt-ban-meetings-in-private-homes-police/>.

<sup>20</sup> Report of the Third Session of the Commission on Human Rights at 32.

<sup>21</sup> *Barankevich v. Russia*, Application No. 10519/03, July 26, 2007, para. 25.

<sup>22</sup> ACHPR Guidelines on Freedom of Association and Assembly in Africa, at para. 69.

<sup>23</sup> Jonathan Blitzer, “Protest by Hologram,” *The New Yorker* (Apr. 20, 2015), available at <https://www.newyorker.com/news/news-desk/protest-by-hologram>.

<sup>24</sup> Haeryun Kang, “‘Ghost Protest’ In Seoul Uses Holograms, Not People,” NPR (Feb. 24, 2016), available at <https://www.npr.org/sections/parallels/2016/02/24/467957260/ghost-protest-in-seoul-uses-holograms-not-people>.

advances in virtual reality technology<sup>25</sup> may soon make it possible for users to gather in virtual environments and engage in collective expression, deliberation, or other civically important activities. Gatherings in digital spaces, by hologram, or in virtual environments will serve many of the important functions played by traditional peaceful assemblies described in para. 1 of the draft General Comment: allowing participants to advance ideas and aspirational goals in the public domain, to establish the extent of support for or opposition to those ideas and goals, and to air grievances.

But the proposed text of para. 4, by referring to “gathering[s] of persons”, may be read to foreclose the application of art. 21 to these newer forms of assembly, by suggesting that protected gatherings must consist *of* persons, as opposed to digital presences, holograms, or virtual avatars representing persons. While we welcome the statement in para. 15 of the draft Comment that “comparable human rights protections also apply to acts of collective expression through digital means, for example online,” this language leaves doubt as to the scope and source of these protections (as we discuss further below). These lacunae can be addressed in part by revising the language in para. 4 to refer to “gathering[s] *by* persons”. This would retain the essential meaning of the current phrasing while leaving room for this language to apply to gatherings engaged in *by* persons, whether or not consisting of persons’ physical embodiments.

**Paragraph 13** of the draft Comment similarly states: “To qualify as an ‘assembly’, there must be a gathering of persons with the purpose of expressing themselves collectively. Assemblies can be held on publicly or privately-owned property [provided the property is publicly accessible].” We would recommend revision: “To qualify as an ‘assembly’, there must be an intentional and temporary gathering by persons for a specific purpose. Assemblies can be held on publicly or privately-owned property.”

Recognizing that our recommended revisions would expand the set of gatherings which the General Comment recognizes as covered by the right of peaceful assembly, we would offer a few additional comments in anticipation of possible objections.

First, recognizing that the right of peaceful assembly extends to gatherings by persons in private places or by digital means does not mean that such gatherings should be subject to the same systems of regulation as those designed for gatherings of physical persons in public places. A gathering in a private home for the purpose of internal deliberation, or a gathering online, will not generally implicate the same concerns as a demonstration on a public thoroughfare or a protest in a park in a residential neighborhood. We would recommend that the General Comment explicitly state that gatherings in private places and gatherings by digital means should not be subject to

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<sup>25</sup> See, e.g., Aric Jenkins, “The Fall and Rise of VR: The Struggle to Make Virtual Reality Get Real,” *Fortune* (June 20, 2019), available at <https://fortune.com/longform/virtual-reality-struggle-hope-vr/>.

the same systems of regulation as gatherings of persons in public places. We have provided a specific suggested revision along these lines with respect to para. 15, below.

Second, extending protection under article 21 to gatherings for non-expressive purposes does not foreclose the possibility of regulating such gatherings. Where a crowd has gathered outside an embassy for the purpose of applying for asylum or on the street in front of a factory that has announced it will be hiring, or where a group of persons is obstructing traffic as a prank or loitering on a street corner, authorities may in some cases permissibly restrict or disperse these gatherings. But the framework for assessing whether such action is permissible would be the same framework governing other restrictions on assemblies: any restrictions must be “imposed in conformity with the law and ... [be] 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 alternative – extending no protection under art. 21 to these gatherings – would inappropriately instrumentalize assemblies, making them valuable only insofar as they serve the ends of expression, and failing to recognize the intrinsic value of human gatherings.

Third, it may be asserted that some of the gatherings discussed here are already protected by other rights under the ICCPR. The use of private residences as places of collective worship may be protected by arts. 17 and 18, for example, and gatherings for purposes of internal deliberation may be protected by art. 19. In our view, the possibility that certain conduct may be protected by multiple rights under the ICCPR does not furnish a reason to restrict the coverage of some of these rights. Instead, we would recommend that each right be fully vindicated on its own terms.<sup>26</sup>

## 2. ASSEMBLIES THROUGH DIGITAL MEANS

As noted above, assemblies are taking place through digital means, mediated by platforms (such as Twitter and Facebook), shared digital spaces (such as chat rooms and listservs), and communication tools (such as Skype and Zoom). New forms of assembly are evolving, such as holographic protests, and we can envision other forms of assembly on the horizon, such as gatherings in virtual environments. Although the draft Comment addresses these new forms of assembly in part, at para. 15, it does not clearly state that these forms of assembly are entitled to protection under article 21 – an omission which may limit the capacity of the Comment to remain relevant to assembly practices in coming decades. In addition to the proposed revisions to paras. 4 and 13 suggested above, we would recommend that the Comment plainly state in paras. 6 and 15 that assemblies under art. 21 may take place by digital means.

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<sup>26</sup> It also bears noting that limiting assembly rights to gatherings “with a common expressive purpose” would arguably bring the full ambit of art. 21 within the coverage of art. 19, thus implicating this same concern.



**Paragraph 6** of the draft Comment notes that assemblies “may take place outdoors or indoors.” This paragraph provides an opportunity to clarify that peaceful assemblies may take place by digital means. We would recommend revising to read: “They may take place outdoors or indoors, and by digital means, as discussed below.”

**Paragraph 15** of the Comment states: “Moreover, although the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, comparable human rights protections also apply to acts of collective expression through digital means, for example online.” We welcome the observation that rights protections apply to acts of gathering through digital means. However, use of the word “comparable” suggests that gatherings through digital means are not protected by art. 21, and furthermore are not protected to the same extent as physical gatherings, without clarifying the source and scope of any applicable protections. We would recommend replacement of “comparable human rights protections” with “human rights protections under article 21,” to avoid uncertainty and clarify that the right of peaceful assembly protects gatherings through digital means.

Consistent with our comments regarding paras. 4 and 13, we would recommend that “acts of collective expression” in para. 15 be replaced with “gatherings by persons.”

Paragraph 15 further states: “At the same time, the fact that people can communicate online should not be used as a ground for restrictions on in-person assemblies.” As suggested above, a particular concern is that authorities may apply restrictive regulatory schemes designed for physical assemblies directly to online spaces. We would recommend making clear that such wholesale transplantation is inappropriate, by adding: “and gatherings online should not be subject to legal regimes designed for the regulation of in-person assemblies, and in particular should not be subject to notification requirements applicable to in-person assemblies in public places.”

### 3. AUTHORIZATION AND NOTIFICATION REQUIREMENTS

In many countries, burdensome notification and authorization procedures are a common means by which authorities frustrate the exercise of the right of peaceful assembly. In our view, it is important that the General Comment emphasize, in para. 80, that peaceful assembly is a right which should not require obtaining permission from the authorities, and that the Comment provide specific guidance in paras. 83-84 aimed at curbing abusive use of these procedures.

**Paragraph 80** of the draft Comment addresses notification and authorization requirements by immediately explaining the operation of notification systems. An important background principle animating this discussion, however, is that organizing and participating in peaceful assemblies is a right, not a privilege, so that

authorities should not condition the exercise of this right on securing authorization.<sup>27</sup> We would recommend that this paragraph open with this principle, by stating: “Organizing and participating in peaceful assemblies is a right and not a privilege, and exercise of this right does not require authorization.”

Paragraph 80 further states: “Notification systems entail that those intending to organize a peaceful assembly are required to inform the authorities accordingly in advance and provide certain salient details.” In our view, the essential difference between authorization and notification system is that under an authorization system, action by the authorities is required for an assembly to take place, while under a notification system, no official action is required for an assembly to go forward. That is, under notification systems the default rule, in the absence of official action, is that an assembly may go forward. Clarifying this point assists in understanding what it means for an authorization system to “in practice function as a system of notification,” as described in para. 84. To explain this point, we would recommend adding the following to the sentence above: “but that affirmative permission need not be obtained from the authorities in order for an assembly to be held.”

Paragraph 80 states: “Notification procedures should not be unduly burdensome and must be proportionate to the potential public impact of the assembly concerned.” We would recommend deleting “unduly”. Notification procedures should simply not be burdensome.<sup>28</sup> It would also be helpful to clarify what it means for a notification procedure not to be burdensome,<sup>29</sup> and to specify that such procedures should respect applicable privacy rights. We would recommend revising: “Notification procedures should not be burdensome or violate the privacy rights of assembly organizers, and must be proportionate to the potential public impact of the assembly concerned. Ordinarily, such procedures should be limited to submission of the date, time and location of the assembly and, when relevant, contact details of the organizer.”

**Paragraph 83** of the draft Comment states: “It should not be excessively long, but should allow enough time for recourse to the courts to challenge restrictions, if necessary.” Rather than focusing on whether notification periods are “excessively

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<sup>27</sup> See UNSR Joint Report, para. 21 (“Freedom of peaceful assembly is a right and not a privilege and as such its exercise should not be subject to prior authorization by the authorities.”); ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 71 (“Participating in and organizing assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state.”).

<sup>28</sup> See ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 72 (“Notification procedures shall be nonburdensome.”).

<sup>29</sup> See 2016 UNSR Joint Report, para. 28(e) (“Notification should be deemed to have been completed when a notice providing sufficient information for the authority to reasonably determine the date, time and location of the assembly and, when relevant, contact details of the organizer, has been received.”); ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 72(b) (“An appropriately simple procedure would involve the filling in of a clear and concise form ... requesting information as to the date, time, location and/or itinerary of the assembly, and the name, address and contact details of principle organizer(s).”).

long,” which seemingly vests authorities with discretion to elongate these periods so long as outer bounds are observed, a more appropriate focus would be on whether notification periods have been made as short as possible, which correctly emphasizes that authorities should limit these periods to make notification processes minimally burdensome.<sup>30</sup> We would recommend revision: “It should be as short as possible, while allowing enough time for recourse to the courts to challenge restrictions, if necessary.” Consider also adding the following sentence: “Authorities should endeavor to simplify notification procedures, including through flexible procedures and use of a single notification authority, and notification should be free of charge.”<sup>31</sup>

**Paragraph 84** states: “Where such requirements persist, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise.” As noted above, the essential characteristic of a notification system is that further official action is not required for an assembly to go forward. An authorization system may thus function in practice as a notification system only if authorization is automatic. Where authorization may be denied for “compelling reasons” – implying that the authorities subject each request for authorization to case-by-case review – an authorization system is not functioning in practice as a notification system, but rather as an authorization system. Suggesting otherwise is likely to introduce confusion about the distinction between authorization systems and notification systems, and to encourage authorization requirements. We recommend deletion of “in the absence of compelling reasons to do otherwise.”

#### 4. USE OF FORCE IN THE CONTEXT OF ASSEMBLIES

The paragraphs of the draft General Comment dealing with the use of force are insufficiently protective of the human rights of participants in assemblies. The use of force implicates critically important interests and specific, forceful guidance is needed to prevent abuses and rights violations. We would recommend that these paragraphs be revised to emphasize that the use of force is heavily disfavored, in paras. 91 and 97; to provide clear guidance regarding the proper operation of accountability and remedial mechanisms, in paras. 89, 101, 102; to protect peaceful participants in assemblies from being subjected to blanket searches and confinement, in paras. 94-95; and to avoid language that may encourage the use of force, in para. 110.

**Paragraph 89** of the draft Comment states: “In any event, all use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination applicable to articles 6 and 7 of the Covenant, and those using force must be accountable for each use of force.” Those using force should be held

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<sup>30</sup> See ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 72(a) (“[A]ny notice period shall be as short as possible.”).

<sup>31</sup> See *id.* at paras. 72-79.

accountable for each use of force by mechanisms independent of their own organizations and chains of command.<sup>32</sup> We would recommend revising: “and those using force must be held accountable for each use of force and should be held accountable through review by a competent and independent authority.”

**Paragraph 91** of the Comment addresses the use of force for law enforcement purposes. We would recommend opening this paragraph by stressing the importance of de-escalation techniques.<sup>33</sup> Consider adding: “Law enforcement officials should be trained in, and prioritize the use of, de-escalation tactics based on communication, negotiation, and engagement, in order to avoid the necessity of using force.”

Paragraph 91 further states: “Law enforcement officials may not use greater force than is reasonably necessary under the circumstances for the dispersal of an assembly, prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders.” This sentence may be read out of context as authorizing any use of necessary force to disperse an assembly, i.e., as suggesting that the only limitation on dispersal of assemblies is that any force used be necessary. To explicitly link this statement to the discussion of dispersal set out at para. 96, we would recommend revising as follows: “Law enforcement officials may not use greater force than is reasonably necessary under the circumstances for the prevention of crime, in effecting or assisting in the lawful arrest of offenders or suspected offenders, or, in the exceptional cases described below, for the dispersal of an assembly.”

**Paragraph 92** of the draft Comment states: “As a general rule, the military should not be used to police assemblies.” Because this sentence suggests that use of the military to police assemblies may be permissible under some circumstances, we consider it important to specify the exact contours of these circumstances.<sup>34</sup> We would recommend adding: “Any use of the military to police assemblies should be limited to exceptional circumstances, where absolutely necessary, with military personnel under the command of police authorities and fully trained in applicable human rights standards and national law enforcement policies and guidelines.”

**Paragraph 94** states: “Powers of ‘stop and search’ or ‘stop and frisk’, applied to those who participate in assemblies, or are about to do so, must be exercised based on evidence of a threat posed.” This sentence may be read as permitting blanket searches of assembly participants whenever there is a general threat, in contravention of

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<sup>32</sup> See ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, para. 24.3 (“Any use of force by law enforcement officials during the conduct of an assembly operation should be subject to an automatic and prompt review by a competent and independent authority.”).

<sup>33</sup> See UNSR Joint Report, para. 67(b) (“Tactics in the policing of assemblies should emphasize de-escalation tactics based on communication, negotiation and engagement.”). See also ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, para. 7.2.5.

<sup>34</sup> See ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, para. 3.2.

requirements that personal searches be based on individualized suspicion.<sup>35</sup> We would recommend revising to state that the powers described “must be exercised on a case-by-case basis, based on evidence of a threat posed and individualized suspicion.”

**Paragraph 95** states: “Containment, sometimes referred to as ‘kettling’, where law enforcement officials encircle and close in a section of the demonstrators, may be used only where it is necessary and proportionate to do so, in order to prevent violence during an assembly.” This language may be read as endorsing the kettling of peaceful protesters, as opposed to the containment of persons posing a threat to others in order to protect, e.g., “the public, police officers and other demonstrators.”<sup>36</sup> This leaves significant latitude for authorities to restrict peaceful assemblies based on spurious and hard-to-disprove rationales, thus inviting abuse. We would recommend revising to state: “in order to prevent those encircled from committing violence.”

**Paragraph 97** states: “Where a decision is lawfully taken to disperse an assembly, force should be avoided.” It is important to specify that before using force, dispersal orders must be communicated to assembly participants.<sup>37</sup> We recommend revising: “Where a decision is lawfully taken to disperse an assembly, force should be avoided, including by clearly communicating an intention to disperse the assembly to participants and providing participants with a reasonable opportunity to disperse voluntarily.”

Paragraph 97 further states: “As far as possible, any force used should be directed against a specific individual or group of participants in an assembly.” This sentence, endorsing the use of force against individuals or groups of participants, needs to be forcefully qualified to require justification for the use of force. We would recommend revising: “As far as possible, any force used should be directed against a specific individual or group of participants in an assembly based on a specific imminent or actual threat of violence posed by such individual or group.”

Paragraph 97 also states: “Area weapons such as chemical irritants dispersed at a distance (tear gas) and water cannon tend to have indiscriminate effects.” As a necessary consequence of these effects, the use of area weapons should be disfavored and require a more compelling rationale for use. We recommend adding: “Where dispersal is anticipated to involve the use of area weapons, a more compelling justification must be present for this interference to be proportionate.”

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<sup>35</sup> See *id.* at para. 16.1 (“The use of stop, search and arrest by law enforcement officials should be strictly limited to circumstances in which there is reasonable suspicion that the individual poses an actual risk of violence or is involved in criminal activity.”). See also *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>36</sup> European Court of Human Rights, *Austin v United Kingdom*, Application Nos. 39692/09, 40713/09 and 41008/09, Mar. 15, 2012, para. 18.

<sup>37</sup> See ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, para. 22.4 (“When the dispersal is unavoidable, lawful, proportionate and necessary, law enforcement officials must clearly communicate an intention to disperse the assembly to participants, and provide participants with a reasonable opportunity to disperse voluntarily, before taking any action.”).

**Paragraph 98** of the draft Comment states: “It is never acceptable to fire indiscriminately into a crowd.” We recommend omission of “indiscriminately.” It is not possible to fire into a crowd except indiscriminately, and to suggest otherwise encourages use of violent force with a high likelihood of injuring peaceful bystanders.

**Paragraph 101** states: “There is a duty to investigate effectively, impartially and in a timely manner any allegation of unlawful use of force by law enforcement officials during or in connection with assemblies.” There is a range of unlawful actions by law enforcement officials which should require investigation. We recommend revision: “any allegation of unlawful acts, including unlawful arrest, detention, and use of force, by law enforcement officials during or in connection with assemblies.”

Paragraph 101 further states: “Law enforcement agencies and individual officials must be held accountable for their actions and omissions under domestic and, where relevant, international law and effective remedies must be provided to victims.” An important component of remedial action is taking steps to avoid repetition of use of unlawful force.<sup>38</sup> We would recommend adding: “including implementation of specific measures to prevent recurrence of incidents in which unlawful force was used.”

**Paragraph 102** states: “All use of force by law enforcement officials should be recorded and reflected in a transparent report.” As discussed in our comment to para. 89, accountability mechanisms, such as the development of reports, should not be administered solely by the entities from which any use of force originated. Furthermore, reports regarding the use of force are commonly subject to unnecessary delay, which is not acceptable. We would recommend revising to read: “All use of force by law enforcement officials should be recorded and reflected in a transparent report developed promptly by a competent and independent authority, with the required timelines for development of such report set out in applicable law or regulations.”

Finally, **Paragraph 110** states: “Civilians participating in an assembly during an armed conflict are not protected from being targeted with lethal force, for such time as they are participating directly in hostilities, as that term is understood under international humanitarian law, and to the extent that they are not otherwise protected under international law from attack.” This reads as an endorsement of the use of lethal force against civilians participating in assemblies, and may be cited by authorities to justify abusive acts of violence. In our view, it is also unnecessary to set out requirements under the law of armed conflict in this General Comment. We would recommend revising to simply state: “Specific requirements under international humanitarian law

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<sup>38</sup> See ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 103(f) (“The right to a remedy also requires other measures, such as satisfaction and guarantees of non-repetition, as and where appropriate.”).

govern the use of force against civilians participating directly in hostilities during an armed conflict, including such civilians participating in an assembly.”

#### 5. THE FUNDAMENTAL NATURE OF PEACEFUL ASSEMBLY RIGHTS

As the draft General Comment notes at para. 1, the right of peaceful assembly is a “fundamental human right.” We would recommend several revisions to the Comment to emphasize this point and clarify how tensions between peaceful assembly rights and other rights and interests should be resolved.

**Paragraphs 8, 24, 40** each state: “The right of peaceful assembly is not absolute.” We would recommend avoiding this statement, which is subject to abusive quotation and implies assembly rights are more partial than other rights. Instead, we would recommend stating: “The right of peaceful assembly may be subject to restrictions.”

**Paragraph 35** of the draft Comment states: “Private entities and the broader society, however, may be expected to accept some level of disruption, if this is required for the exercise of the right of peaceful assembly.” The phrase “if this is required” may be read to mean that peaceful assemblies may only be permitted to cause some disruption if there is no alternative way for them to be conducted – a high bar that inappropriately subordinates the right of peaceful assembly to other interests. We would recommend more neutral phrasing, replacing “if this is required” with “if this is the result of”.

**Paragraph 53** states: “At the same time, since assemblies may entail by their very nature a certain level of disruption to ordinary life, such disruptions have to be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions.” We would recommend emphasizing that the authorities should not just restrict assembly rights, but attempt to reconcile rights in tension. To this end, we would recommend revising: “in which case the authorities should aim to reconcile to the extent possible protection of peaceful assembly rights with protection of other rights implicated, and must be able to provide detailed justification for any restrictions imposed.”

Finally, **Paragraph 113** states: “At the same time, participants in peaceful assemblies must not infringe on the rights of others.” This statement goes too far, suggesting that peaceful assemblies may never permissibly generate some interference with the rights of others – a principle plainly inconsistent with para. 53. Protection of the rights and freedoms of others may in some cases furnish a legitimate ground for restricting peaceful assemblies, provided other requirements of legality, necessity, and proportionality are satisfied. But the statement set forth here would make the right of peaceful assembly subordinate to all other rights. We recommend revision: “At the same time, participation in peaceful assemblies may in some instances have consequences for the enjoyment of certain rights by others.”

# Human Rights Committee

## General comment No. 37

### Article 21: right of peaceful assembly\*

Revised draft prepared by the Rapporteur, Mr. Christof Heyns

[ ] indicate language on which consensus was not reached during the first reading.

#### 1. General remarks

1. The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other rights related to political freedom, it also constitutes the very foundation of a system of participatory government based on democracy, human rights [ , the rule of law] and pluralism, where change is pursued through persuasion rather than force. Peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain, and to establish the extent of support for or opposition to those ideas and goals. Where they are used to air grievances, peaceful assemblies may create opportunities for inclusive participatory and peaceful resolution of differences.

2. The right of peaceful assembly is, moreover, a valuable tool that can and has been used for the realisation of a wide range of other human rights, including socio-economic rights. It can be of particular importance to marginalised and disenfranchised members of society. Peaceful assembly is a legitimate use of the public space. A failure to recognise the right to participate in peaceful assemblies is a marker of repression.

3. The first sentence of article 21 of the International Covenant on Civil and Political Rights provides that: “The right of peaceful assembly shall be recognized”. The right is articulated in similar general terms in other international, including regional, instruments.<sup>1</sup> The content of the right has been elaborated upon by international bodies, for example in their views, concluding observations, resolutions, interpretive guidelines, and judicial decisions.<sup>2</sup> In addition to being bound by international law to recognize the right of peaceful assembly, the vast majority of States also recognize the right in their respective national constitutions.<sup>3</sup>

4. The right of peaceful assembly protects the non-violent, intentional and temporary gathering of by persons with a common expressive for a specific purpose in a public or

\* Draft as adopted on First Reading during the 127th Session (14 October – 8 November 2019).

<sup>1</sup> See, e.g., the Universal Declaration of Human Rights (art. 20 (1)); the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (art. 11); the American Convention on Human Rights (art. 15); the African Charter on Human and Peoples’ Rights (art. 11); and the Arab Charter on Human Rights (art. 28).

<sup>2</sup> See, e.g., Organization for Security and Cooperation in Europe (OSCE), *Guidelines on Freedom of Peaceful Assembly* (Warsaw, OSCE Office for Democratic Institutions and Human Rights, 2010); and the African Commission on Human and Peoples’ Rights (ACHPR), *Guidelines on Freedom of Association and Assembly in Africa* (2017); and *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (2017).

<sup>3</sup> A total of 180 of the 193 States Members of the United Nations recognize the right of peaceful assembly in their constitutions. For an exposition of the various national domestic legal regimes on peaceful assemblies, see [www.rightofassembly.info](http://www.rightofassembly.info).



private ly accessible / the same] place.<sup>4</sup> The right of peaceful assembly constitutes an individual right that is exercised collectively.<sup>5</sup> Inherent to the right is thus an associative element.

**Commented [A1]:** Please see Principal Comment #1.

5. Everyone can exercise the right of peaceful assembly. This includes children.<sup>6</sup> In addition to its exercise by citizens, the right may also be exercised by, for example, foreign nationals,<sup>7</sup> including migrant workers,<sup>8</sup> asylum seekers, undocumented persons, and refugees,<sup>9</sup> as well as stateless persons and internally displaced persons.

**Commented [A2]:** Not mentioning these categories of persons may be read to imply that such persons may not exercise the right. See ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 67 n.48.

6. Peaceful assemblies may take many forms, including demonstrations, meetings, processions, strikes, rallies, sit-ins and flash-mobs.<sup>10</sup> Such gatherings are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches. They may take place outdoors or indoors, and by digital means, as discussed below.

**Commented [A3]:** Please see Principal Comment #2.

7. In many cases, peaceful assemblies do not pursue controversial ideas or goals and cause little or no disruption. The aim might indeed be, for example, to commemorate a national day or celebrate the outcome of a sporting event. However, peaceful assemblies are sometimes used to pursue ideas or goals that are somehow contentious, and their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity. They may be intended to have these consequences, without necessarily calling into question the protection such assemblies should enjoy. To the extent that these events may create security or other risks, they have to be managed within a human rights framework.

8. The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure the exercise of the right.<sup>11</sup> This requires States to allow such assemblies to take place with no unwarranted interference and, whenever it is needed, to facilitate the exercise of the right and to protect the participants. The right of peaceful assembly is not absolute may be subject to restrictions, but any restrictions must be narrowly drawn. There are, in effect, limitations on the limitations that may be imposed. In particular, authorities must justify any restrictions, and restrictions are not permissible unless they have been provided for by law and are necessary and proportionate to the permissible grounds for restrictions set out in article 21.

**Commented [A4]:** Please see Principal Comment #5.

9. The full protection of the right of peaceful assembly is possible only when the other, often overlapping, rights related to political freedom are also protected, notably freedom of

**Commented [A5]:** In our view, the specific standards governing these limitations are critical to understanding sections 2 and 3, regarding the scope of the right and the obligations of States parties. The excellent summary of these standards set forth in para. 40 thus comes too late. We would recommend adding the sentence indicated.

<sup>4</sup> In *Kivenmaa v. Finland* (CCPR/C/50/D/412/1990), para. 7.6, the Committee described a public assembly as “the coming together of more than one person for a lawful purpose in a public place that others than those invited also have access to”. (See, however, the dissenting opinion in the annex, para. 2.5, which questions the application of this definition to the facts of the case). The Committee has subsequently emphasized the expressive element of the exercise of the right. See, e.g., *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 9.3; and *Poplavny v. Belarus* (CCPR/C/118/D/2139/2012), para. 8.5. On the requirement of a public space, see *Popova v. Russian Federation* (CCPR/C/122/D/2217/2012), para. 7.3. According to the OSCE *Guidelines on Freedom of Peaceful Assembly*, an assembly entails “the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose” (para. 1.2). The ACHPR *Guidelines on Freedom of Association and Assembly in Africa* describe assembly as “an act of intentionally gathering, in private or in public, for an expressive purpose and for an extended duration” (para. 3).

<sup>5</sup> Cf. General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 9.

<sup>6</sup> Convention on the Rights of the Child, art. 15; and African Charter on the Rights and Welfare of the Child, art. 8.

<sup>7</sup> General comment No. 15 (1986) on the position of aliens under the Covenant, paras. 1–2; and CCPR/C/KWT/CO/3, para. 42.

<sup>8</sup> CCPR/C/DOM/CO/6, para. 32.

<sup>9</sup> CCPR/C/NPL/CO/2, para. 14.

<sup>10</sup> During the drafting of article 21 of the Covenant, specific examples of peaceful assemblies were not included, in order to keep the formulation of the right open. Marc J. Bossuyt, *Guide to the “travaux préparatoires” of the International Covenant on Civil and Political Rights* (Dordrecht, The Netherlands, Martinus Nijhoff Publishers, 1987), p. 414. See also European Court of Human Rights, *Navalny v. Russia* (application No. 29580/12), judgment of 15 November 2018, para. 98.

<sup>11</sup> European Court of Human Rights, *Primov and others v. Russia* (application No. 17391/06), judgment of 12 June 2014, paras. 118–119.

expression, but also rights such as freedom of association and political participation.<sup>12</sup> Protection of the right of peaceful assembly is in many cases also dependent on the realization of a broader range of rights, such as non-discrimination, movement, privacy, religion, freedom from cruel, inhuman or degrading treatment and from arbitrary detention, and the right to life.

10. Where gatherings do not fall within the scope of “peaceful assemblies”, for example ~~if they become where gatherings are violent as described further below~~, they are no longer protected by article 21, but the individuals involved retain their other rights under the Covenant, including those listed above, subject to the applicable restrictions.

11. The way in which ~~public-peaceful~~ assemblies are conducted changes over time, and the same applies to their context. This may in turn affect the way in which the right is to be approached by the authorities. For example, emerging technologies present new spaces and opportunities as well as challenges for the exercise of the right of peaceful assembly. Communication technologies often play an integral role in organizing and monitoring, but also in impeding assemblies. Surveillance technologies can be used to detect threats of violence and thus to protect the public, but they could also infringe on the privacy and other rights of participants and bystanders. A range of less-lethal weapons, as well as remote-controlled weapons systems, have become available for use during the policing of assemblies, which can restrain or increase the force that is employed during assemblies. Moreover, there is increased private ownership of public spaces. Considerations such as these need to inform a contemporary understanding of the legal framework required to give full effect to article 21.

## 2. Scope of the right of peaceful assembly

12. Establishing whether someone’s right of peaceful assembly is protected by article 21, as is the case with other rights, entails a two-stage process. It must first be established whether the conduct in question falls within the *scope* of the protection offered by the right. It must thus be determined whether the conduct amounts to participation in a “peaceful assembly,” as the term is used in the article. Secondly, it must be established whether or not legitimate *restrictions* apply to the exercise of the right in that context.

13. To qualify as an “assembly”, there must be an intentional and temporary gathering of by persons with the purpose of expressing themselves collectively for a specific purpose. Assemblies can be held on publicly or privately-owned property ~~provided the property is publicly accessible~~.

14. The common expressive purpose of those participating in a peaceful assembly may, for example, entail conveying a collective position on a particular issue. It can also entail asserting group solidarity or identity. Assemblies may, in addition to having such an expressive purpose, also serve other goals and still be protected by article 21. While commercial gatherings would not generally fall within the scope of what is protected by article 21, they are covered to the extent that they have an expressive purpose.

15. While the notion of an assembly implies that there will be more than one participant in the gathering,<sup>13</sup> a single protester enjoys comparable protections under the Covenant, for example under article 19. Moreover, although the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, ~~comparable human rights protections under article 21 also apply to acts of collective expression gatherings by persons~~ through digital means, for example online.<sup>14</sup> At the same time, the fact that people can communicate online should not be used as a ground for restrictions on in-person assemblies, and gatherings online should not be subject to legal regimes designed for the regulation of in-person assemblies, and in particular should not be subject to notification requirements applicable to in-person assemblies in public places.

16. Peaceful assemblies are often organized ~~well~~ in advance, allowing enough time for the organisers to notify the authorities to make the necessary preparations. However,

**Commented [A6]:** The issue of evolution of assembly participants’ behavior is complex and encompasses such considerations as possible infiltration by provocateurs; the necessity of isolating bad actors; and protecting the right of peaceful assembly for non-violent participants. We would recommend not raising this complex issue in this introductory paragraph, but rather focusing simply on the non-coverage of violent gatherings by art. 21.

**Commented [A7]:** The reference to “public assemblies” unnecessarily limits the scope of this statement. We recommend revision, especially given that this Comment generally addresses the right of “peaceful assembly.”

**Commented [A8]:** Please see Principal Comment #1.

**Commented [A9]:** Please see Principal Comment #2.

**Commented [A10]:** Inclusion of “well” is unnecessary (and possibly inaccurate) in the context of this statement, and susceptible to being quoted by authorities to justify excessively long notification periods.

<sup>12</sup> Cf. A/HRC/39/28, para. 14.

<sup>13</sup> *Coleman v. Australia* (CCPR/C/87/D/1157/2003), para. 6.4.

<sup>14</sup> A/HRC/41/41.

spontaneous assemblies, ~~as which are often~~ direct responses to current events, ~~that do not~~ allow enough time to provide such notification, whether coordinated or not. ~~Such assemblies~~ are also protected by article 21. Counter-assemblies occur when one peaceful assembly takes place to express opposition to another peaceful assembly. Both of these assemblies fall within the scope of the protection of article 21.

17. A “peaceful” assembly stands in contradistinction to one that is violent (or is deemed to be violent, because of the incitement or intention of violence, or because violence is imminent). The terms “peaceful” and “non-violent” are thus used interchangeably in this context. The right of peaceful assembly may by definition not be exercised in a violent way. “Violence” in this context typically entails the use by participants of physical force that is likely to result in injury or death,<sup>15</sup> or serious damage to property.<sup>16</sup> Mere disruption of vehicular or pedestrian movement or daily activities does not amount to violence.

18. If an assembly is peaceful, the fact that not all the domestic legal requirements pertaining to the assembly have been met by the organisers or participants does not, on its own, place the participants outside the scope of the protection of article 21. Civil disobedience or direct-action campaigns are ~~in principle covered protected~~ by article 21, provided they are non-violent, ~~so that there is a right to participate in these campaigns and restrictions on this right must be permissible under art. 21 as described below.~~<sup>17</sup>

19. A violent assembly is one that is characterized by [widespread and serious] violence [, and is sometimes referred to as a riot]. There is not always a clear dividing line between assemblies that are peaceful and those that are violent, but there is a presumption in favour of considering assemblies to be peaceful.<sup>18</sup> Moreover, isolated acts of violence by some participants should not be attributed to ~~other participants, including organizers.~~<sup>19</sup> Some participants or parts of an assembly may thus be covered by article 21, while others in the same assembly are not.

20. ~~The question of whether an assembly ceases to be peaceful must be answered with reference to violence, or conduct deemed violent, that originates or is deemed to originate from the participants. Violence by the authorities against participants in a peaceful assembly does not in itself render the assembly violent. The same applies to violence by members of the public aimed at the assembly, or by participants in counter-assemblies.~~<sup>20</sup>

21. Participants’ conduct may be deemed violent if, before or during the event, ~~the participants are inciting others to the [imminent] use of unlawful force, violence, or the authorities have and produce evidence that~~ the participants have violent intentions and plan to act on them,<sup>21</sup> or violence is imminent. ~~Isolated instances where this is the case will not suffice to taint an entire assembly as no longer peaceful, but where the incitement or intention of violence is widespread, or if the primary leaders or organizers of the assembly themselves convey this message, participation in the gathering as such is no longer protected under article 21.~~

22. [Option 1: The scope of article 21 is further determined by article 20 of the Covenant, which requires States parties to prohibit propaganda for war (art. 20 (1)) and advocacy of national, racial or religious hatred that constitutes incitement to discrimination or hostility, in addition to violence (art. 20 (2)). Participation in assemblies where the expressive purpose is covered by article 20 does not fall within the scope of, and is not protected by, article 21. Such assemblies must be prohibited. Option 2 is that this paragraph be deleted, and the need

**Commented [A11]:** Not all spontaneous assemblies are direct responses to current events – some may simply arise spontaneously in response to a continuing state of affairs (such as economic scarcity or ongoing repression). It is important to avoid implying that only assemblies responding to breaking current events may be exempted from notification requirements.

**Commented [A12]:** In this paragraph and several others – paras. 25, 42, 54, and 64 – the phrase “in principle” is used. The meaning of this phrase is not clear, but it may be read to imply that the principle expressed will sometimes not apply in practice. We recommend omission.

**Commented [A13]:** The phrase “covered by article 21” is not explained in the current draft. This language also differs from the phrase more commonly used in the draft, “protected by article 21”. It would be helpful to use consistent phraseology throughout the Comment and to explain the meaning of the operative phrase.

**Commented [A14]:** We would recommend revising to avoid implying that such acts may permissibly be attributed to organizers.

**Commented [A15]:** The legal principle set forth here is that the characterization of an assembly as peaceful turns on whether violence or equivalent conduct – conduct deemed to be violent, as described in paras. 17 and 21 – originates with the participants. However, as currently drafted, this paragraph suggests that this inquiry turns not on whether conduct is *deemed to be violent*, but on whether conduct is *deemed to originate with participants*. The question of whether conduct is deemed to originate with participants implicates complex questions of vicarious liability and attribution that are often problematic in the context of assemblies, as paras. 19 and 75 recognize. We recommend revision to focus on the appropriate inquiry, i.e., whether conduct is deemed to be violent.

**Commented [A16]:** We would recommend using the term “violence” as defined above, rather than introducing a new phrase which may turn on the application of local law.

**Commented [A17]:** To avoid abuse, given the difficulty of ascertaining intentions, this should be linked to an objective basis.

**Commented [A18]:** In cases of mobilizations organized by coalitions, leaders of one peripheral group may convey a message of incitement or intention to commit violence. Authorities should address these cases analogously to isolated instances of violence in an assembly, as described in para. 19, and the gathering should not be removed from the protection of art. 21.

<sup>15</sup> For the WHO definition of violence, see WHO Global Consultation on Violence and Health, WHO/EHA/SPI.POA.2.

<sup>16</sup> OSCE, *Guidelines on Freedom of Peaceful Assembly*, paras. 26–27.

<sup>17</sup> According to the European Court of Human Rights, in *Frumkin v. Russia* (application No. 74568/12), judgment of 5 January 2016, para. 97: “It is important for public authorities ... to show a certain degree of tolerance towards peaceful gatherings, even unlawful ones, if the freedom of assembly ... is not to be deprived of all substance.”

<sup>18</sup> European Court of Human Rights, *Lashmankin and others v. Russia* (applications Nos. 57818/09 and 14 others), judgment of 7 February 2017, paras. 402–403.

<sup>19</sup> European Court of Human Rights, *Frumkin v. Russia*, para. 99.

<sup>20</sup> However, as far as restrictions on such assemblies are concerned, see paras 58-59 below.

<sup>21</sup> European Court of Human Rights, *Lashmankin and others v. Russia*, para. 402.

to act against incitement of discrimination or hostility (not violence, that is part of the scope) be dealt with in the section on restrictions that require justification.]

23. The carrying by participants of objects that are or could be viewed as weapons is not necessarily sufficient to render the assembly violent. That has to be determined on a case-by-case basis, dependent on, among other considerations, local cultural practices, whether there is an indication of violent intent, and the risk of violence presented by the presence of such objects.

### 3. The obligation of States parties in respect of the right of peaceful assembly

24. The Covenant imposes the obligation on States parties to “respect and ensure” all the rights in the Covenant (article 2 (1)); to take legal and other measures to achieve this purpose (article 2 (2)); and to pursue accountability, and provide effective remedies for violations of Covenant rights (article 2 (3)).<sup>22</sup> The obligation of States parties in respect of the right of peaceful assembly under article 21 thus comprises these various elements. ~~Because the right of peaceful assembly may be subject to restrictions in some cases, albeit only in accordance with art. 21 and the Covenant generally is not absolute, the obligation to respect and ensure the right of peaceful assembly may in some cases be adjusted accordingly.~~

25. Importantly, States must leave it to the participants freely to determine the purpose or expressive content of the assembly. The approach of the authorities to peaceful assemblies and any restrictions imposed must thus ~~in principle~~ be “content neutral”.<sup>23</sup> While the “time, place and manner” of assemblies may under some circumstances be the subject of legitimate restrictions under article 21, given the expressive nature of assemblies, participants must as far as possible be able to conduct assemblies within “sight and sound” of the target audience.<sup>24</sup>

26. The obligation to respect and ensure peaceful assemblies imposes essentially negative as well as positive duties on States. They have the negative duty of *no unwarranted interference* with participants in peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block or disrupt assemblies without compelling justification, and not to sanction participants without legitimate cause.

27. States parties moreover have the positive duty to *facilitate* peaceful assemblies, and to make it possible for participants to achieve their legitimate objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly and put into place a legal and institutional framework within which the right can be exercised effectively. In some cases, specific intervention may be required on the part of the authorities. For example, they may need to block off streets, redirect traffic, provide security, ~~or identify a suitable alternative site where the assembly may still be conducted within the sight and sound of the intended target.~~ ~~Where needed,~~ States must also *protect* participants against possible abuses by non-State actors, such as interference or violence by other members of the public,<sup>25</sup> counter-demonstrators [and private security providers].

28. States must not deal with assemblies in a discriminatory manner, for example on the basis of nationality, race, ethnicity, age, political opinion, religion, belief, minority status, disability, sexual orientation or gender identity.<sup>26</sup> Particular efforts should be made to ensure equal and effective protection of the right of peaceful assembly of individuals who are

**Commented [A19]:** Please see Principal Comment #5.

**Commented [A20]:** Please see comment to para. 18.

**Commented [A21]:** In many instances, as the jurisprudence of the Committee shows – see, e.g., *Levinov v. Belarus* (CCPR/C/123/D/2239/2013) – authorities identify alternative sites not to facilitate exercise of the right of peaceful assembly, but to interfere with the right by removing an assembly to a remote location. We recommend making clear that facilitative relocation must preserve the ability of those participating in an assembly to convey their message to their intended audience. See also ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 90(a).

**Commented [A22]:** “Where needed” suggests that this requirement is discretionary or partial without meaningfully elaborating upon the principle enunciated.

**Commented [A23]:** Consider including, as additional impermissible bases: sex, color, social origin, genetic features, language, migration status, property, socio-economic status, or birth. See ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 80.

<sup>22</sup> General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

<sup>23</sup> OSCE, *Guidelines on Freedom of Peaceful Assembly*, para. 3.3.

<sup>24</sup> OSCE, *Guidelines on Freedom of Peaceful Assembly*, para. 3.5.

<sup>25</sup> *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6. See also European Court of Human Rights, *Plattform “Ärzte für das Leben” v. Austria* (application No. 10126/82), judgment of 21 June 1988, para. 25.

<sup>26</sup> CCPR/C/GEO/CO/4, para. 8; CCPR/C/MNG/CO/6, para. 11; and A/HRC/31/66, paras. 15-16.

members of groups who are or have been subjected to discrimination.<sup>27</sup> This includes the duty to protect participants from homophobic, sexual or gender-based attacks.<sup>28</sup>

29. In dealing with assemblies, States parties must take precautionary measures aimed at preventing violations and abuses of the different rights at stake. At the same time, the need to take such precautionary measures cannot serve as a justification for measures that violate human rights, such as the right to privacy.

30. The right of peaceful assembly does not exempt participants from challenges by other members of society. States must respect and ensure counter-assemblies as assemblies in their own right, while preventing undue disruption of the assemblies to which they are opposed. Counter-assemblies should also be treated in a content-neutral way, and so that the authorities may not extend differential treatment to assemblies and counter-assemblies based on the views expressed. Counter-assemblies should be allowed to take place, where possible, within sight and sound of the assemblies against which they are directed.

31. The possibility that a peaceful assembly may provoke violent or negative reactions from some members of the public is not in and of itself a legitimate reason to prohibit or restrict the assembly. The State is obliged to take all [possible / appropriate] measures to protect the participants and as far as possible to allow the assembly to take place in an uninterrupted manner.

32. A functioning and transparent legal and decision-making system lies at the core of the duty to respect and ensure peaceful assemblies. Domestic law must clearly set out the duties and responsibilities of all functionaries involved in managing assemblies, and be aligned with the relevant international standards. States must ensure public awareness about what the law provides with respect to the right to assemble; what, if any, procedures those wanting to exercise the right have to follow; who the responsible authorities are; the rules applicable to those officials; and the remedies available in the case of alleged violations of rights.

33. States parties must moreover ensure independent and transparent oversight of all bodies involved in managing peaceful assemblies, including through timely access to judicial remedies in case of [alleged/potential] violations of the right.

34. The role of journalists, human rights defenders and others involved in monitoring, including documenting or reporting on assemblies, is of special importance, and they are entitled to protection under [article 21 of] the Covenant.<sup>29</sup> They may not be prohibited from or unduly limited in exercising these functions, also in respect of the actions of law enforcement officials. The equipment they use must not be confiscated or damaged. Even if the assembly is declared unlawful or is dispersed, that does not terminate the right to monitor it. No one should be harassed or penalised as a result of their attendance at demonstrations.<sup>30</sup> It is a good practice for independent national human rights institutions and non-governmental organizations to monitor assemblies.

35. States parties hold the primary responsibility as far as the realization of the right of peaceful assembly is concerned. Private entities and the broader society, however, may be expected to accept some level of disruption, if this is required for the result of the exercise of the right of peaceful assembly. Business enterprises have a responsibility to respect human rights, including the right of peaceful assembly.<sup>31</sup>

36. Given that some peaceful assemblies have an expressive function, and political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should likewise enjoy a heightened level of accommodation and protection.<sup>32</sup>

**Commented [A24]:** We believe it would be worthwhile to elaborate upon what “content-neutral” means in this context, emphasizing that the authorities may not extend preferential treatment to certain assemblies.

**Commented [A25]:** Some assembly laws restrict the right of peaceful assembly where it may give rise to “offense”, “ill-will”, or other negative reactions. We would recommend making clear that such restrictions are impermissible. See ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 70(a).

**Commented [A26]:** The bar on prohibition expressed here is welcome, but significant interference with those monitoring assemblies should be proscribed, as well.

**Commented [A27]:** Please see Principal Comment #5.

**Commented [A28]:** Please see Principal Comment #1. We would recommend this revision to reflect that some peaceful assemblies have a non-expressive purpose.

<sup>27</sup> A/HRC/31/66, para. 16.

<sup>28</sup> CCPR/C/CHL/CO/6, para. 19. See also *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), para. 10.4.

<sup>29</sup> *Pranevich v. Belarus* (CCPR/C/124/D/2251/2013), para. 6.3 and 6.4; and *Zhagiparov v. Kazakhstan* (CCPR/C/124/D/2441/2014), paras. 13.2–13.5.

<sup>30</sup> CCPR/C/MRT/CO/1, para. 22. See also General Assembly resolution 66/164, operative para. 6.

<sup>31</sup> Guiding Principles on Business and Human Rights, A/HRC/17/31, annex.

<sup>32</sup> General comment No. 34 (2011) on the freedoms of opinion and expression, paras. 34, 37–38 and 42–43. See also CCPR/C/LAO/CO/1, para. 33.

37. Article 21 and its related rights do not only protect assemblies while and where they are ongoing. Activities conducted outside the immediate scope of the gathering but that are integral to making the exercise meaningful are also covered. The obligations of States parties thus extend to actions, by such as participants<sup>2</sup>, or organizers<sup>2</sup>, observers, monitors, and journalists, such as: dissemination of information about an upcoming event;<sup>33</sup> travelling to the event;<sup>34</sup> communication between participants leading up to and during the assembly; conveying information about the assembly to the outside world; and leaving the assembly afterwards. These activities may, like the assembly itself, be subjected to restrictions, but such restrictions are also to be narrowly drawn and construed, in a manner justifiable in terms of article 21. For example, publicity for an upcoming assembly before notification has taken place cannot be penalized in the absence of a specific indication of what dangers would have been created by the early distribution of the information.<sup>35</sup>

**Commented [A29]:** As para. 34 recognizes, some of these activities will be protected by art. 21 when engaged in by observers, monitors and journalists, as well.

**Commented [A30]:** Specifying that restrictions must be “narrowly drawn and construed” makes clear that both the drafting and the interpretation of restrictions are at issue here, while the reference to article 21 links this statement to the more general discussion of restrictions in sec. 4.

38. In the digital age, many of these associated activities happen online or otherwise rely upon digital services. Such associated activities are also protected under article 21. States parties shall, for example, refrain from unduly blocking or limiting Internet connectivity in relation to peaceful demonstrations.<sup>36</sup> The same applies to geo-targeted or technology-specific interference or hindering of connectivity. States parties should ensure that self-regulation by Internet service providers does not unduly affect assemblies and that the activities of those providers do not unduly infringe upon the privacy or safety of assembly participants. Any restrictions on the operation of information dissemination systems must conform with the tests for restrictions on freedom of expression.<sup>37</sup>

**Commented [A31]:** While this statement is welcome, we strongly recommend omitting “unduly,” as preserving excessive room for authorities to interfere with connectivity. If “unduly” was included to leave room for authorities to impose these measures to manage violent assemblies, the statement may instead be qualified to apply only to peaceful demonstrations. Throttling of Internet service is a growing concern, so we would recommend expanding this statement to address limitations on connectivity, as well.

39. While all organs of State carry the obligation to respect and ensure the right of peaceful assembly, decisions on assemblies are often taken at the local level. States’ obligations to protect and facilitate the right of peaceful assembly require adequate regular training and resources for officials at all levels of government with responsibility for managing assemblies. It is important therefore that the necessary understanding and expertise are available at the local level.

**Commented [A32]:** We recommend a stronger formulation.

#### 4. Restrictions on the right of peaceful assembly

40. The right of peaceful assembly is not absolute may be subject to restrictions in certain cases. While the right may be limited, there is a presumption against restrictions.<sup>38</sup> The onus is on the authorities to justify any restrictions,<sup>39</sup> and where this onus is not met, article 21 is violated.<sup>40</sup> Restrictions are not permissible unless they can be shown to have been authorities contemporaneously show they are provided for by law, and are necessary and proportionate to the permissible grounds for restrictions enumerated in article 21, and discussed below. This framework applies both to restrictions imposed specifically on assemblies, and to measures of general applicability, such as identification checks, enforced in some cases in order to restrict the exercise of the right of peaceful assembly. The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations to it.<sup>41</sup> Restrictions should not be aimed at discouraging participation in assemblies, potentially causing a chilling effect.

**Commented [A33]:** Please see Principal Comment #5.

**Commented [A34]:** As the preceding sentence notes, authorities must actually justify any restrictions, as opposed to being hypothetically able to articulate justifications. The highlighted sentence should be revised to make clear that authorities must articulate justifications at the time restrictions are imposed, rather than formulating justifications on a post hoc and opportunistic basis. See also ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 93.

41. Where the imposition of restrictions on an assembly is contemplated, the authorities should, where appropriate, consider intermediate or partial restrictions, rather than viewing the choice as one between no intervention and prohibition. It is, moreover, often preferable to allow an assembly to take place and to decide afterwards whether measures should be

**Commented [A35]:** We would recommend clarifying that restrictions subject to this framework may either be assembly-specific or measures of general applicability enforced in some cases to restrict assembly rights. In the Kyrgyz Republic, for example, there have been numerous cases where police officers, having not found grounds for terminating peaceful assemblies, checked the passports of assembly participants. Those assembly participants who did not have passports with them were detained by the police and taken to the police office to “establish their identity” and to check their registration – with the effect that the exercise of assembly rights was frustrated.

<sup>33</sup> *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008), para. 9.3.

<sup>34</sup> *Evezov and others v. Belarus* (CCPR/C/112/D/1999/2010 and Corr.1), para. 8.5.

<sup>35</sup> *Tulzhenkova v. Belarus*, para. 9.3.

<sup>36</sup> CCPR/C/CMR/CO/5, para. 41.

<sup>37</sup> General comment No. 34, para. 34.

<sup>38</sup> OSCE *Guidelines on Freedom of Peaceful Assembly*, para. 2.1.

<sup>39</sup> *Gryb v. Belarus* (CCPR/C/108/D/1316/2004), para. 13.4.

<sup>40</sup> *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3.

<sup>41</sup> *Turchenyak and others v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), para. 7.4.

taken regarding transgressions during the event, rather than to impose prior restraints in an attempt to eliminate all risks.<sup>42</sup>

42. Any restrictions on participation in peaceful assemblies should in principle be based on a differentiated or individualized assessment of the conduct of the individual and the assembly concerned. Blanket restrictions on participation in peaceful assemblies are presumptively disproportionate.

**Commented [A36]:** Please see comment to para. 18.

43. Article 21 spells out a *general framework* which any restrictions on the right of peaceful assembly must meet, namely the cumulative requirements of legality, necessity and proportionality, and which spells out a limited number of grounds on which restrictions may be based.

44. The second sentence of article 21 provides that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law. This poses the formal requirement of *legality*, akin to the requirement that limitations must be “provided by law” in other articles of the Covenant. Restrictions must thus be imposed through law or administrative actions based on law. The laws in question must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with its execution.<sup>43</sup>

45. In addition, there are also the interrelated, substantive requirements that restrictions shall be both necessary and proportionate. Article 21 provides that any restrictions must be *necessary* in a democratic society. In order to satisfy this requirement, it must be established that a restriction responds to a pressing social need related to one of the permissible grounds recognised by article 21. Any restrictions should be considered imperative, in the context of a society based on democracy, political pluralism and human rights, as opposed to being merely reasonable or expedient.<sup>44</sup> They must also be the least intrusive among the measures that might serve the relevant protective function. Establishing whether a restriction is necessary requires a factual assessment.

46. Restrictions, moreover, must also be shown to be *proportionate*, which requires an value judgment/assessment, balancing the nature and the extent of the interference against the reason for interfering.<sup>45</sup> If the former outweighs the latter, the restriction is disproportionate and thus not permissible.

**Commented [A37]:** We recommend omitting “value,” which implies this weighing is inherently subjective. For the same reason, and because “assessment” appropriately conveys the balancing exercise involved, we recommend use of “assessment” (not “judgement”).

47. The last part of the second sentence of article 21 sets out the legitimate grounds on which the right of peaceful assembly may be restricted. This is an exhaustive list, consisting of the following grounds: the interests of national security; public safety; public order (*ordre public*); the protection of public health; or morals; or the protection of the rights and freedoms of others.

48. The “interests of national security” may serve as a ground for restrictions if such restrictions are necessary to protect the existence of the nation, its territorial integrity or political independence against force or a real threat of force.<sup>46</sup> This threshold will only exceptionally be met by assemblies that can be described as “peaceful”, and this ground does not warrant restrictions on assemblies aimed at expressing criticism of security forces or the government. Moreover, where the very reason that national security has deteriorated is the suppression of human rights, such deterioration cannot be used to justify further restrictions on those rights, including assembly rights.<sup>47</sup>

**Commented [A38]:** This revision would address a common abuse of the national security ground.

<sup>42</sup> OSCE, *Guidelines on Freedom of Peaceful Assembly*, para. 109.

<sup>43</sup> *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.7; and General comment No. 34, para. 25.

<sup>44</sup> European Court of Human Rights, *Chassagnou and others v. France* (application Nos. 25088/94, 28331/95 and 28443/95), judgment of 29 April 1999, para. 113; and General comment No. 34, para. 34.

<sup>45</sup> *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.4; and OSCE, *Guidelines on Freedom of Peaceful Assembly*, para. 39.

<sup>46</sup> Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex), para. 29.

<sup>47</sup> *Ibid.*, para. 32.

49. For the protection of “public safety” to be invoked as a ground for restrictions on the right of peaceful assembly,<sup>48</sup> it must be established that the assembly creates a significant and immediate risk of danger to the safety of persons (to their life or physical integrity) or a similar risk of serious damage to property.<sup>49</sup>

50. “Public order” refers to the sum of the rules that ensure the functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights, including the right of peaceful assembly.<sup>50</sup> States parties should not rely on some vague notion of “public order” as a ground to justify overbroad restrictions on the right of peaceful assembly.<sup>51</sup> Peaceful assemblies are in some cases inherently disruptive. “Public order” and “law and order” are not synonyms, and the prohibition of “public disorder” in domestic law should not be used to impose undue restrictions on peaceful assemblies.

51. The “protection of public health” ground may exceptionally permit restrictions to be imposed, for example where there is an outbreak of an infectious disease and gatherings are dangerous. This may in extreme cases also be applicable where the sanitary situation during the assembly presents a substantial health risk to the general public or to the participants themselves.<sup>52</sup>

52. Restrictions on peaceful assemblies should only exceptionally be imposed for “the protection of morals”. If used at all, this ground should not be used to protect parochial understandings of morality or be based on principles deriving exclusively from a single social, philosophical or religious tradition<sup>53</sup> and any such restrictions must be understood in the light of the universality of human rights and the principle of non-discrimination.<sup>54</sup> Restrictions based on this ground may not for instance reflect opposition to expressions of or advocacy regarding sexual orientation.<sup>55</sup>

53. Restrictions imposed on an assembly on the ground that they are for “the protection of the rights and freedoms of others” may relate to the protection of Covenant or other [fundamental] rights of people not participating in the assembly. The protection of the right to life, freedom from ill-treatment, movement, [property rights] or the right to work may, for example, potentially justify restrictions. [At the same time, since assemblies may entail by their very nature a certain level of disruption to ordinary life, such disruptions have to be accommodated, unless they impose a disproportionate burden, in which case the authorities should aim to reconcile to the extent possible protection of peaceful assembly rights with protection of other rights implicated, and must be able to provide detailed justification for any restrictions imposed.<sup>56</sup>

54. In addition to the general framework for restrictions provided for in article 21 as discussed above, a number of *additional considerations* are relevant to restrictions on the right of peaceful assembly. Central to the realisation of the right of peaceful assembly is the requirement that any restrictions must ~~in principle~~ be content neutral, and thus not be related to the message conveyed by the assembly.<sup>57</sup> A contrary approach defeats the very purpose of peaceful assemblies as a tool of political and social participation aimed at allowing members of the population to advance ideas and establish the extent of support that exists for them.

55. Restrictions on peaceful assemblies must thus not be used, explicitly or implicitly, to stifle expression of political opposition to a government,<sup>58</sup> including calls for changes of

**Commented [A39]:** This sentence may be read to be limited to assemblies by persons identifying as LGBTI in which the intended purpose is to express sexual orientation. Such assemblies form only a subset of the assemblies relating to sexual orientation which may face restrictions based on the protection of morals. To encompass assemblies advocating protection of LGBTI rights, including by persons not identifying as LGBTI, we recommend the revision shown.

**Commented [A40]:** Please see Principal Comment #5.

**Commented [A41]:** Please see comment to para. 18.

<sup>48</sup> See CCPR/C/MKD/CO/3, para. 19; *Alekseev v. Russian Federation*, para. 9.5.

<sup>49</sup> Siracusa Principles, para. 33.

<sup>50</sup> Siracusa Principles, para. 22.

<sup>51</sup> CCPR/C/KAZ/CO/1, para. 26; CCPR/C/DZA/CO/4, para. 45.

<sup>52</sup> European Court of Human Rights, *Cisse v. France* (application No. 51346/99), judgment of 9 April 2002.

<sup>53</sup> General comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 8.

<sup>54</sup> General comment No. 34, para. 32.

<sup>55</sup> *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), paras. 10.5–10.6; *Alekseev v. Russian Federation*, para. 9.6.

<sup>56</sup> *Stambrovsky v. Belarus* (CCPR/C/112/D/1987/2010), para. 7.6; *Pugach v. Belarus* (CCPR/C/114/D/1984/2010), para. 7.8.

<sup>57</sup> *Alekseev v. Russian Federation*, para. 9.6.

<sup>58</sup> CCPR/C/MDG/CO/4, para. 51.



government, the constitution, the political system, or political independence for part of the country. They should not be used to prohibit insults to the honour and dignity of officials or State organs<sup>59</sup> or to pursue other objectives favoured by the authorities. Restrictions must moreover not be discriminatory:<sup>60</sup> and in particular should not be applied to favor assemblies affiliated with the authorities or viewed as advancing the interests of the authorities.

56. The rules applicable to freedom of expression should be followed when dealing with the expressive element of peaceful assemblies, also when it provokes a hostile reaction. As with freedom of expression, restrictions on peaceful assembly may only be based on the message conveyed by the participants under the strictly limited circumstances described under article 20 of the Covenant be based on the message conveyed by the participants.

57. In accordance with article 20 of the Covenant, peaceful assemblies may not be used for any propaganda for war (paragraph 1), or for any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (paragraph 2).<sup>61</sup> Assemblies which [in their entirety] fall within the scope of article 20 must be prohibited. As far as possible, action should be taken in such cases against the individual perpetrators, rather than against the assembly as a whole.<sup>62</sup>

58. The fact that an assembly provokes or may provoke a hostile reaction from members of the public against participants, as a general rule, does not justify prohibition; the assembly must be allowed to go ahead and its participants must be protected.<sup>63</sup> However, in the exceptional case where the State is manifestly unable to protect the participants from such threat, restrictions on the assembly may be imposed.

59. Any such restrictions must be able to withstand strict scrutiny. An unspecified risk of violence, or the mere possibility that the authorities will not have the capacity to prevent or neutralize the violence emanating from those opposed to the assembly, is not enough; the State must be able to show, based on a concrete risk assessment, that it would not be able to contain the situation, even if significant law enforcement capability were to be deployed.<sup>64</sup> In such cases, alternatives such as postponement or relocation of the assembly must be considered before resort to prohibition.

60. Generally, the use of flags, uniforms, signs and banners is to be regarded as a legitimate form of expression that should not be restricted, even if such symbols are reminders of a painful past. In exceptional cases, where such symbols are intrinsically and [exclusively / directly] associated with [incitement to discrimination, hostility or violence ~~/acts of violence, or are aimed at intimidating members of the population~~], restrictions may be justified.<sup>65</sup> Where such symbols are used as part of a broader message of incitement to violence, this may lead to the conclusion that the assembly does not fall within the scope of the “peaceful” assemblies protected by article 21.

61. The regulation of the “time, place and manner” of assemblies is generally content neutral, and while there is some scope for restrictions that regulate these elements, the onus remains on the authorities to justify any such restriction in terms of the grounds set out above on a

**Commented [A42]:** We would recommend clarifying that both discrimination *against* disfavored assemblies and discrimination *in favor of* government-affiliated assemblies are impermissible. Such revision would also complement para. 30. See also IACHR Report on Protest and Human Rights, para. 4.

**Commented [A43]:** As drafted, it is not clear whether the “strictly limited circumstances” noted here refer only to those described in para. 57, or may include other circumstances not described in the Comment. To make clear that this sentence in fact does refer only to para. 57, we recommend revision as indicated.

**Commented [A44]:** We would recommend using the language of art. 20.

<sup>59</sup> CCPR/C/79/Add. 86, para. 18.

<sup>60</sup> See para. 28 above.

<sup>61</sup> Article 20 (1) and (2).

<sup>62</sup> Any restrictions pursuant to article 20 (2) should be justified in terms of the requirements posed for restrictions by article 19 or 21. See General comment No. 34, paras. 50–52; article 4, Convention on the Elimination of Racial Discrimination; and Committee on the Elimination of Racial Discrimination, General recommendation No. 35 (2013) on combating racist hate speech. See also the threshold test for incitement to hatred in the Rabat Plan of Action (2012), A/HRC/22/17/Add.4, appendix, para. 29 as well as the Beirut Declaration and its 18 commitments on “Faith for Rights” (A/HRC/40/58, annexes I and II).

<sup>63</sup> *Alekseev v. Russian Federation*, para. 9.6

<sup>64</sup> *Alekseev v. Russian Federation*, para. 9.6.

<sup>65</sup> OSCE, *Guidelines on Freedom of Peaceful Assembly*, para. 97. See also European Court of Human Rights, *Osmani and others v. the former Yugoslav Republic of Macedonia* (application No. 50841/99) decision of 11 October 2001; and *Fáber v. Hungary* (application No. 40721/08), judgment of 24 October 2012, paras. 56–58, in which the Court outlined a threshold of intimidation.

case-by-case basis.<sup>66</sup> Any such restrictions should still, as far as possible, allow participants to assemble “within sight and sound” of their target audience.<sup>67</sup>

62. Concerning restrictions on the *time* of assemblies: while there are no fixed rules about restrictions on the duration of peaceful assemblies, participants must have sufficient opportunity to effectively manifest their views.<sup>68</sup> Peaceful assemblies are generally by their nature temporary, and should be left to end by themselves. Assemblies should, moreover, not be limited solely because of their frequency. The duration and frequency of a demonstration may play a central role in conveying its message to its target audience. However, the cumulative impact of sustained gatherings should not disproportionately impact the rights of others.

63. Restrictions on the precise time of day or date when assemblies can or cannot be held, raise concerns about their compatibility with the Covenant.<sup>69</sup> At the same time, it should be recognized that the timing of assemblies can affect their impact and may warrant carefully drawn restrictions. For example, assemblies held at night in residential areas might have an undue significant impact on the lives of those who live nearby.

64. As for any restriction on the element of *place*: peaceful assemblies may in principle be conducted in all places to which the public has access or should have access, such as public squares and streets. General restrictions on access to some spaces, such as buildings and parks, may limit the right to assemble in such places, where such restrictions satisfy the requirements of article 21.

65. Participants in assemblies may not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed, or the general public.<sup>70</sup> As a general rule, prohibitions on all assemblies anywhere in the capital;<sup>71</sup> in any public location except a single specified place, either in a city,<sup>72</sup> or outside the city centre;<sup>73</sup> or prohibitions on assemblies in “all the streets in the city”, may not be imposed.

66. The designation of the perimeters of places such as courts, parliament or other official buildings as areas where assemblies may not take place should generally be avoided, because these are public spaces. Use of “protected place” designations to restrict assemblies in locations of particular public significance is also generally impermissible. To the extent that assemblies in such places are prohibited, the restrictions must be specifically justified and narrowly circumscribed.<sup>74</sup>

67. The increased privatization of public spaces highlights the fact that assembly rights may require some recognition on private property that is open to the public.<sup>75</sup> The interests of private owners have to be given due weight, but may have to be limited if the participants have no other reasonable way to convey their message to their target audience.<sup>76</sup> Where ownership of land is contested, including by indigenous or local communities, those contesting this ownership have the right to exercise their peaceful assembly rights on the land

**Commented [A45]:** We would recommend the revision shown to avoid implying that the test for restrictions on timing of assemblies is somehow more relaxed.

**Commented [A46]:** To avoid suggesting that restrictions on assemblies held at night in residential areas are presumptively permissible, we would recommend using “significant”, which is a more neutral term that avoids prejudging the permissibility of any restrictions. See also ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 83.

**Commented [A47]:** As drafted, this sentence suggests that general access restrictions are permissible under art. 21. In fact, such restrictions should be subject to the same framework as other restrictions on assemblies. This is especially true of restrictions on access to spaces with symbolic importance, or which may be important to fulfilling the expressive purpose of an assembly.

**Commented [A48]:** We would recommend deletion of “generally” as weakening the rule set forth here. Use of “should” rather than “shall” adequately conveys that this rule is not universally mandatory. In some jurisdictions, such as Zimbabwe, assemblies are also restricted via “protected place” designations, which often prohibit assemblies in locations where such gatherings would have particular expressive force, such as near the residences of high government officials. We would recommend that paragraph be revised to particularly address this type of restrictive designation

<sup>66</sup> OSCE, *Guidelines on Freedom of Peaceful Assembly*, paras. 99–100.

<sup>67</sup> *Turchenyak et al. v. Belarus*, para. 7.4.

<sup>68</sup> European Court of Human Rights, *Éva Molnár v. Hungary* (application No. 10346/05), judgment of 7 October 2008, para. 42.

<sup>69</sup> CCPR/C/KOR/CO/4, para. 52.

<sup>70</sup> *Ibid.*; CCPR/C/KAZ/CO/1, para. 26.

<sup>71</sup> CCPR/C/DZA/CO/4, para. 45.

<sup>72</sup> *Turchenyak et al. v. Belarus*, para. 7.5.

<sup>73</sup> *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010), para. 8.5.

<sup>74</sup> European Court of Human Rights, *Yılmaz Yildiz and others v. Turkey* (application No. 4524/06), judgment of 14 October 2014, para. 43.

<sup>75</sup> European Court of Human Rights, *Annenkov and others v. Russia* (application No. 31475/10), judgment of 25 July 2017, para. 122; United States Supreme Court, *Marsh v. Alabama* (*United States Reports*, vol. 326, No. 501, 1946), p. 2.

<sup>76</sup> European Court of Human Rights, *Appleby and others v. United Kingdom* (application No. 44306/98), judgment of 6 May 2003, para. 47. In *Giménez v. Paraguay* (CCPR/C/123/D/2372/2014), para. 8.5, the Committee held that a two-year restriction on participation in assemblies after the occupation of a private property was excessive.

in question. Assemblies held on privately owned property with the consent of the owners enjoy the same protection as other assemblies.

68. As far as restrictions on the *manner* of peaceful assemblies are concerned: participants should generally be left to determine whether they want to use equipment such as posters or megaphones or musical instruments to convey their message. Assemblies may entail the erection of structures, and the setting up of sound systems, to reach their audience, but given the temporary nature of assemblies, they need to be non-permanent constructions.<sup>77</sup>

69. In general, States parties should not place a limit on the number of participants in assemblies. Any such restriction can be accepted only if there is a clear connection with a legitimate ground for restrictions as set out in article 21, for example where public safety considerations dictate a maximum crowd capacity for a stadium or a bridge.<sup>78</sup>

70. The wearing of face coverings or other disguises by assembly participants, such as hoods or masks, may form part of the expressive element of a peaceful assembly or serve to counter reprisals, also in the context of new surveillance technologies, and serve to protect privacy. Assembly participants should not be prohibited from wearing face coverings where there is no demonstrable evidence of imminent violence on their part and probable cause for arrest.<sup>79</sup> As such, blanket bans cannot ever be justified in the context of peaceful assemblies and only be justified on an exceptional basis.

71. The collection of relevant information and data by authorities, including through the operation of notification and authorization requirements, should be justified in terms of assisting may under certain circumstances assisting the management of assemblies, improving public accountability and constituteing part of a proactive approach to preventing violations and abuses of rights from occurring. However, any information gathering, including through surveillance or the interception of communications, and the way in which data are retained and accessed, must strictly conform to the applicable international standards, including on the right to privacy, and may never be aimed at intimidating or harassing (would-be) participants in assemblies.<sup>80</sup> States must develop and adhere to robust legal frameworks for data protection in order to safeguard information gathered through such processes and protect the rights of those implicated. Such practices should be regulated by appropriate and publicly accessible domestic legal frameworks compatible with international standards and subject to scrutiny by the courts.<sup>81</sup>

72. The mere fact that assemblies take place in public does not mean that participants' right to privacy is not protected. Privacy rights may be infringed, privacy is not capable of being infringed, for example, by facial recognition and other technologies that can identify individual participants in a crowd. The same applies to the monitoring of social media to glean information about participation in peaceful assemblies. Independent scrutiny and oversight must be exercised over the collection of personal information and data of those engaged in peaceful assemblies.

73. The freedom of State officials to participate in peaceful assemblies should not be limited more than is strictly required by the need to ensure public confidence in their impartiality, and thus their ability to perform their service duties.<sup>82</sup> Ensuring that members of the security forces in particular retain public confidence in their impartiality is a legitimate State concern.

74. Requirements for participants, including organizers of assemblies, to cover the costs of policing or security<sup>83</sup> or medical assistance or cleaning<sup>84</sup> associated with peaceful assemblies

**Commented [A49]:** We would urge that the Comment address protests held on disputed land by local or indigenous communities, which often have no other means of making their concerns heard. Such protests are often subject to dispersal, including by violent means. See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Chile, A/HRC/32/36/Add.1, para. 59 (discussing protests by Mapuche in Chile); IACHR Report on Protest and Human Rights, para. 213 (discussing indigenous protests in Guatemala).

**Commented [A50]:** Based on the preceding sentence, a blanket ban would only be permissible where assembly participants generally had violent intentions, i.e., in case of a non-peaceful assembly. We recommend revision to emphasize that such bans are never justifiable, even exceptionally, in case of peaceful assemblies.

**Commented [A51]:** This sentence may be read as a general endorsement of information gathering, which seems inappropriate in this context. We would recommend revising to make clear that collection of information and data must be justified by reference to the ends described, and that this extends as well to the collection of information through permitting processes. See also ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, para. 10.2.

**Commented [A52]:** Many countries do not have adequate legal frameworks for data protection in place, which increases the risk that any information gathering will result in violation of privacy rights. We would recommend squarely addressing this point.

**Commented [A53]:** This sentence is difficult to parse and can be read to mean that in case of assemblies in public places, infringements are permissible (because privacy is "capable of being infringed"). We would recommend revising to focus on protection of privacy rights.

<sup>77</sup> See para. 60 on the use of symbols as forms of expression. Also see *Frumkin v. Russia*, para. 107.

<sup>78</sup> CPR/C/THA/CO/2/1, para. 39.

<sup>79</sup> Cf. OSCE *Guidelines on Peaceful Assembly*, para. 98; ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 81.

<sup>80</sup> A/HRC/31/66, para. 73.

<sup>81</sup> CCPR/C/KOR/CO/4, paras. 42–43.

<sup>82</sup> OSCE, *Guidelines on Freedom of Peaceful Assembly*, para. 60.

<sup>83</sup> CCPR/C/CHE/CO/4, para. 48.

<sup>84</sup> *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), paras. 8.2–8.3.

are generally not compatible with article 21. These costs should as a rule be covered by public funds and should not be transferred to the participants.<sup>85</sup>

75. Assembly organizers and participants are obliged to make reasonable efforts to comply with legal requirements, but they should be held accountable [ , civilly or criminally, ] for their own conduct only.<sup>86</sup> Responsibility of organizers or participants for damage caused by other participants in an assembly should as a general rule not be imposed.<sup>87</sup> If this is done, responsibility must be limited to damages or injury directly and foreseeably resulting from the specific conduct of the organizers or participants, which could have been prevented with reasonable efforts while maintaining the expressive aim of the assembly what they could have foreseen and prevented with reasonable efforts. It is good practice for assembly organizers to appoint marshals where necessary, but such an obligation must not be imposed. Assembly organizers should not be required to obtain insurance to protect against the possibility of damage or injury occurring during an assembly.

76. Where criminal or administrative sanctions are used against participants in a peaceful assembly, such sanctions must be proportionate and cannot apply where their conduct is protected by the right. Any criminal sanctions should result only from the operation of generally applicable criminal laws, not laws specifically governing assemblies, and be specified within the penal code.

77. Recourse to courts, and to other tribunals as appropriate, concerning restrictions must be readily available. The length of appeal or review procedures against restrictions on an assembly must not jeopardize the exercise of the right.<sup>88</sup> The procedural guarantees of the Covenant apply in all such cases, and also to issues such as deprivation of liberty and the imposition of sanctions, such as fines, in connection with participation in peaceful assemblies.<sup>89</sup> Where the right to peaceful assembly has been infringed, organizers and participants shall have a right to a remedy.

78. States parties may not require pledges from individuals not to participate in future assemblies.<sup>90</sup> or otherwise impose restrictions on the future exercise of peaceful assembly rights by individuals. Conversely, no one may be forced to participate in an assembly.<sup>91</sup>

79. While terrorism and other similar acts of violence must be criminalised, such crimes must not be defined in a vague or overly broad manner that may curtail or discourage peaceful assembly.<sup>92</sup>

## 5. Notification and authorization regimes

80. Organizing and participating in peaceful assemblies is a right and not a privilege, and exercise of this right does not require authorization. Notification systems entail that those intending to organize a peaceful assembly are required to inform the authorities accordingly in advance and provide certain salient details, but that affirmative permission need not be obtained from the authorities in order for an assembly to be held. Such a requirement is permissible to the extent necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others.<sup>93</sup> At the same time, this requirement can be misused to stifle peaceful assemblies. Like other interferences with the right of assembly, notification requirements have to be justifiable on the grounds listed in

**Commented [A54]:** The costs of facilitating assemblies, including the costs described here, should never be imposed on participants. Covering these costs is part of the State obligation to facilitate exercise of the assembly right. See UNSR Joint Report, para. 40; IACHR Report on Protest and Human Rights, para. 163. It is also important to avoid implying that these costs may permissibly be imposed on organizers of assemblies.

**Commented [A55]:** We consider that this test, as drafted, permits imposition of liability in too many cases. Every mass gathering involves some possibility of damage or injury, and for assemblies concerning controversial issues – especially where the authorities or counter-protesters are likely to behave aggressively – damage or injury becomes more foreseeable. We would recommend either deleting this sentence altogether, or phrasing a narrower and more protective test. See also ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 101.

**Commented [A56]:** In some jurisdictions, organizers must obtain insurance to protect against the possibility of damage occurring during assemblies, which amounts to requiring organizers to bear responsibility for damage caused by other participants. We recommend making clear that such requirements are impermissible.

**Commented [A57]:** We would recommend clarifying that criminal sanctions should not be imposed by assembly laws, but by generally applicable criminal laws specified in the penal code. See ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 99.

**Commented [A58]:** This sentence may be read to imply that access to other tribunals, including administrative tribunals, may substitute for access to the courts. In practice, administrative tribunals often provide an inadequate forum for addressing restrictions, owing to reasons of delay, inadequate resourcing, or insufficient independence. We recommend clarifying that access to the courts must always be available.

**Commented [A59]:** This paragraph as drafted does not explain what right access to courts or other tribunals is meant to vindicate – namely, the right to a remedy. See ACHPR Guidelines on Freedom of Association and Assembly in Africa, para. 103.

**Commented [A60]:** In some instances – as illustrated by *Gimenez v. Paraguay*, CCPR/C/123/D/2372/2014, para. 8.5 – authorities bar individuals from participating in future peaceful assemblies. The Comment should make clear that such broad prospective restrictions on the exercise of rights under art. 21 are impermissible.

<sup>85</sup> ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 102(b).

<sup>86</sup> A/HRC/31/66, para. 26.

<sup>87</sup> OSCE, *Guidelines on Freedom of Peaceful Assembly*, para. 197. Compare Constitutional Court of South Africa, *South African Transport and Allied Workers Union and another v. Garvas and others* (case CCT 112/11) [2012] ZACC 13.

<sup>88</sup> CCPR/C/POL/CO/6, para. 23.

<sup>89</sup> *E.V. v. Belarus* (CCPR/C/112/D/1989/2010), para. 6.6.

<sup>90</sup> CCPR/C/KHM/CO/2, para. 22; CCPR/C/JOR/CO/5, para. 32.

<sup>91</sup> CCPR/C/TKM/CO/2, para. 44.

<sup>92</sup> CCPR/C/SWZ/CO/1, para. 36; CCPR/C/BHR/CO/1, para. 29. See also A/HRC/40/52.

<sup>93</sup> *Kivenmaa v. Finland*, para. 9.2. See also ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 72.

article 21.<sup>94</sup> The enforcement of notification requirements must not become an end in itself.<sup>95</sup> Notification procedures should not be ~~unduly burdensome~~ or violate the privacy rights of assembly organizers, and must be proportionate to the potential public impact of the assembly concerned. Ordinarily, such procedures should be limited to submission of the date, time and location of the assembly and, when relevant, contact details of the organizer.

Commented [A61]: Please see Principal Comment #3.

81. A failure to notify the authorities of an assembly [should not render participation in the assembly unlawful, and] should not in itself be used as a basis for dispersing the assembly or arresting the participants or organisers, or the imposition of undue sanctions such as charging them with criminal offences.<sup>96</sup> It also does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants.

82. In general, assemblies should be excluded from notification regimes where the impact of the assembly on others can reasonably be expected to be minimal, for example because of the nature, location or limited size or duration of the assembly. Notification must not be required for spontaneous assemblies since they do not allow enough time to provide such notice.<sup>97</sup>

83. [The minimum period of advance notification required for pre-planned assemblies might vary according to the particular context.<sup>98</sup> It should be as short as possible, while allowing ~~not be excessively long, but should allow~~ enough time for recourse to the courts to challenge restrictions, if necessary. Authorities should endeavor to simplify notification procedures, including through flexible procedures and use of a single notification authority, and notification should be free of charge.]

Commented [A62]: Please see Principal Comment #3.

84. Authorization regimes, where those wishing to assemble have to apply for permission (or a permit) from the authorities to do so, undercut the idea that peaceful assembly is a basic right.<sup>99</sup> Where such requirements persist, they must in practice function as a system of notification, with authorization being granted as a matter of course. ~~in the absence of compelling reasons to do otherwise,~~ Such systems should also not be overly bureaucratic.<sup>100</sup> Notification regimes, for their part, must not in practice function as authorization systems.<sup>101</sup>

Commented [A63]: Please see Principal Comment #3.

## 6. Duties and powers of law enforcement agencies

85. The fundamental duty of any law enforcement agency involved in policing a peaceful assembly is to respect and ensure the exercise of the fundamental rights of the participants, while also taking reasonable measures to protect other members of the public, including journalists,<sup>102</sup> monitors and observers, as well as public and private property, from harm.<sup>103</sup>

86. Law enforcement agencies should as far as possible work towards establishing channels for communication and dialogue between the various parties involved in assemblies, before and during the assembly, aimed at ensuring predictability, de-escalating tensions and resolving disputes.<sup>104</sup> While engaging in such contact is generally good practice, participants and organisers cannot be required to do so.

87. [Where the presence of law enforcement officials is required, the policing of an assembly should be planned and conducted with the intention of enabling the assembly to take place as planned by participants and organizers], and with a view to minimizing the potential for

Commented [A64]: Recommend revising to make clear that policing should aim at facilitating the assembly plan of the participants and organizers, as opposed to a plan devised or imposed by the authorities.

<sup>94</sup> Ibid. See also *Sekerko v. Belarus*, para. 9.4.

<sup>95</sup> *Popova v. Russian Federation*, para. 7.5.

<sup>96</sup> Where administrative sanctions are imposed for the failure to notify, this must be justified by the authorities. See, e.g., *Popova v. Russian Federation*, para. 7.4, 7.5. See also A/HRC/31/66, para. 23.

<sup>97</sup> *Popova v. Russian Federation*, para. 7.5. See also European Court of Human Rights, *Éva Molnár v. Hungary*, para. 38.

<sup>98</sup> CCPR/CO/83/KEN, para. 23; CCPR/C/CHE/CO/4, para. 48; CCPR/C/DZA/CO/4, para. 45.

<sup>99</sup> CCPR/C/MAR/CO/6, para. 45; CCPR/C/GMB/CO/2, para. 41; and ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 71.

<sup>100</sup> *Poliakov v. Belarus*, para. 8.3.

<sup>101</sup> CCPR/C/JOR/CO/5, para. 32.

<sup>102</sup> CCPR/C/AGO/CO/1, para. 21; CCPR/C/GEO/CO/4, para. 12; and CCPR/C/KOR/CO/4, para. 52.

<sup>103</sup> A/HRC/31/66, para. 41.

<sup>104</sup> Ibid., para. 38.

injury to any person and damage to property.<sup>105</sup> A plan should be elaborated for the policing of each assembly for which the authorities have received notification in advance, or are otherwise informed about, and through which public order may be affected. The plan should detail the instruction, equipping and deployment of all relevant officials and units.

88. ~~More generic contingency plans, Generally applicable policies, and training protocols~~ should also be elaborated by relevant law enforcement agencies for the policing of assemblies, including generic contingency plans in particular for the policing of assemblies for which the authorities are not notified in advance and which may affect public order.<sup>106</sup> These include spontaneous assemblies and counter-assemblies. Law enforcement officials should receive adequate regular training regarding these policies, protocols, and plans, including by receiving written guidelines governing their actions with respect to policing assemblies. Clear command structures must exist to underpin accountability, as well as protocols for recording and documenting events, ensuring the identification of officers and reporting of any use of force.

89. Law enforcement officials, in carrying out their duties, are obliged, as far as possible, to apply non-violent means before resorting, when absolutely necessary, to the use of force.<sup>107</sup> In any event, all use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination applicable to articles 6 and 7 of the Covenant, and those using force must be accountable for each use of force.<sup>108</sup> and should be held accountable through review by a competent and independent authority.

90. Where it is lawful and required to arrest certain participants or to disperse an assembly, such actions must comply with international law and have a basis in the domestic law provisions on the permissible use of force.<sup>109</sup> Domestic legal regimes on the use of force by law enforcement officials must be brought in line with the requirements posed by international law, where that is not already the case. Domestic law must not grant officials largely unrestricted powers, for example to use “force” or “all necessary force” to disperse assemblies, or to “shoot for the legs”. In particular, domestic law must not allow use of force against participants in an assembly on a wanton, excessive or a discriminatory basis.<sup>110</sup>

91. Law enforcement officials should be trained in, and prioritize the use of, de-escalation tactics based on communication, negotiation, and engagement, in order to avoid the necessity of using force. Only the minimum force necessary may be used where this is required for a legitimate law enforcement purpose. Once the need for any use of force has passed, such as when a violent individual is safely apprehended during an assembly, no further resort to force is permissible.<sup>111</sup> Law enforcement officials may not use greater force than is reasonably necessary under the circumstances for the ~~dispersal of an assembly,~~ prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, or, in the exceptional cases described below, for the dispersal of an assembly.<sup>112</sup>

92. Wherever possible, only law enforcement officials who have been trained in the policing of assemblies should be deployed for that purpose.<sup>113</sup> As a general rule, the military should not be used to police assemblies.<sup>114</sup> The law enforcement officials responsible for policing assemblies should be suitably equipped, including where needed with appropriate less-lethal weapons and adequate personal protective equipment.<sup>115</sup> States parties should ensure that all

**Commented [A65]:** Rather than just devising contingency plans and training protocols, law enforcement agencies should devise generally applicable policies governing the policing of assemblies, and law enforcement officials must receive training and information on these policies. In the absence of such general policies and training, many policing decisions will be left to the discretion of individual officials in the heat of the moment, increasing the likelihood that assemblies result in escalation, disputes, and disorder. Without clear policies articulated in advance, it will also be more difficult to hold officials accountable for actions taken in the course of policing assemblies. See also ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, para. 7.2.

**Commented [A66]:** Please see Principal Comment #4.

**Commented [A67]:** Please see Principal Comment #4.

<sup>105</sup> Human Rights Council resolution 38/11, preambular para. 10; A/HRC/26/36, para. 51.

<sup>106</sup> A/HRC/31/66, para. 37.

<sup>107</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 4.

<sup>108</sup> General comment No. 36 (2018) on the right to life; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Code of Conduct for Law Enforcement Officials.

<sup>109</sup> CCPR/C/MDV/CO/1, para. 23.

<sup>110</sup> CCPR/C/MAR/CO/6, paras. 45–46; CCPR/C/BHR/CO/1, para. 55. For an exposition of domestic laws on the use of force, see [www.policinglaw.info](http://www.policinglaw.info).

<sup>111</sup> Code of Conduct for Law Enforcement Officials, art. 3.

<sup>112</sup> *Ibid.*, commentary to art. 3.

<sup>113</sup> CCPR/C/KHM/CO/2, para. 12; CCPR/C/GRC/CO/2, para. 42; and CCPR/C/BGR/CO/4, para. 38.

<sup>114</sup> CCPR/C/VEN/CO/4, para. 14; and ACHPR, *Guidelines on Policing Assemblies in Africa*, para. 3.2.

<sup>115</sup> *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* (2019); European Court of Human Rights, *Güleç v. Turkey* (application No. 21593/93), judgment of 27 July

weapons, including less-lethal weapons, are subject to strict independent testing and should evaluate and monitor their impact on the rights to life and bodily integrity and the mental well-being of those affected.<sup>116</sup> Any use of the military to police assemblies should be limited to exceptional circumstances, where absolutely necessary, with military personnel under the command of police authorities and fully trained in applicable human rights standards and national law enforcement policies and guidelines.

Commented [A68]: Please see Principal Comment #4.

93. Preventive detention of targeted individuals, in order to keep them from participating in assemblies, may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly.<sup>117</sup> It may be done only in exceptional cases and where the authorities have actual knowledge of the intent of the individuals involved to engage in or incite acts of violence during a particular assembly, and where other measures to prevent violence from occurring will clearly be inadequate.<sup>118</sup> Practices of indiscriminate mass arrest prior to, during or following an assembly, are arbitrary.<sup>119</sup>

94. Powers of “stop and search” or “stop and frisk”, applied to those who participate in assemblies, or are about to do so, must be exercised on a case-by-case basis, based on evidence of a threat posed and individualized suspicion. Otherwise, they constitute an unwarranted interference with the right to privacy.<sup>120</sup> They may not be used in a discriminatory manner. The mere fact that an individual is connected to a peaceful assembly does not constitute reasonable grounds for stopping and searching them.<sup>121</sup>

Commented [A69]: Please see Principal Comment #4.

95. Containment, sometimes referred to as “kettling”, where law enforcement officials encircle and close in a section of the demonstrators, may be used only where it is necessary and proportionate to do so, in order to prevent those encircled from committing violence during an assembly. A legitimate aim is to facilitate the right of non-violent participants to continue to exercise their right of peaceful assembly. Necessary and targeted law enforcement measures taken against specific individuals are often preferable to containment. Particular care must be taken to contain, as far as possible, only people who could be linked directly to violence and to limit the duration of the containment to the minimum necessary. Where the tactic of containment is used indiscriminately or punitively, it violates the right of peaceful assembly,<sup>122</sup> and may also violate other rights such as freedom from arbitrary detention and freedom of movement.

Commented [A70]: Please see Principal Comment #4.

96. Only in exceptional cases may an assembly be dispersed. This may be the case if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence, but in all cases the rules on the use of force must be strictly followed. An assembly that remains peaceful but which nevertheless causes a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is “serious and sustained”.<sup>123</sup>

97. Where a decision is lawfully taken to disperse an assembly, force should be avoided, including by clearly communicating an intention to disperse the assembly to participants and providing participants with a reasonable opportunity to disperse voluntarily. Where that is not possible in the circumstances, only the minimum force necessary should be used.<sup>124</sup> As far as possible, any force used should be directed against a specific individual or group of participants in an assembly based on a specific imminent or actual threat of violence posed

1998, para. 71; and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 2.

<sup>116</sup> General comment No. 36.

<sup>117</sup> CCPR/C/MKD/CO/3, para. 19.

<sup>118</sup> European Court of Human Rights, *S., V. and A. v. Denmark* (Applications Nos. 35553/12, 36678/12 and 36711/12), judgment of 22 October 2018 (Grand Chamber), paras. 77 and 127.

<sup>119</sup> CCPR/C/CAN/CO/6, para. 15.

<sup>120</sup> CCPR/C/NOR/CO/7, paras. 20–21; European Court of Human Rights, *Gillan and Quinton v. United Kingdom* (Application No. 4158/05), judgment of 12 January 2010, paras. 63–65 and 84–85.

<sup>121</sup> A/HRC/31/66, para. 43.

<sup>122</sup> European Court of Human Rights, *Austin and others v. United Kingdom* (Applications Nos. 39629/09, 40713/09; and 41008/09), judgment of 15 March 2012 (Grand Chamber), para. 68.

<sup>123</sup> A/HRC/31/66, para. 62.

<sup>124</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 13; A/HRC/26/36, para. 75.

by such individual or group. Area weapons such as chemical irritants dispersed at a distance (tear gas) and water cannon tend to have indiscriminate effects. Where dispersal is anticipated to involve the use of area weapons, a more compelling justification must be present for this interference to be proportionate. When such weapons are used, all reasonable efforts should be undertaken to limit risks such as causing harm to bystanders or causing a stampede. Tear gas should not be used in confined spaces.<sup>125</sup>

Commented [A71]: Please see Principal Comment #4.

98. Firearms are not an appropriate tool for the policing of assemblies.<sup>126</sup> Firearms must never be used simply to disperse an assembly.<sup>127</sup> In order to comply with international law, any use of firearms by law enforcement officials must be limited to targeted individuals in circumstances in which it is strictly necessary to confront an imminent threat of death or serious injury or, in truly exceptional circumstances, a grave and proximate threat to life.<sup>128</sup> Given the threat such weapons pose to life, this minimum threshold should also be applied to the firing of rubber-coated or plastic bullets.<sup>129</sup> It is never acceptable to fire indiscriminately into a crowd. Where law enforcement officials are prepared for the use of force, or violence is considered likely, the authorities must also ensure adequate medical facilities.

Commented [A72]: Please see Principal Comment #4.

99. The use of unnecessary or excessive or disproportionate force may breach articles 7 and 9 of the Covenant and, where death results, may violate article 6.<sup>130</sup> In an extreme case, widespread or systematic use of lethal force against participants in peaceful assemblies may constitute a crime against humanity.<sup>131</sup>

100. The State is responsible under international law for the actions and omissions of its law enforcement agencies and should promote a culture of accountability for law enforcement officials during assemblies. To enhance effective accountability, uniformed law enforcement officers should always display a form of identification during assemblies.<sup>132</sup>

101. There is a duty to investigate effectively, impartially and in a timely manner any allegation of unlawful acts, including unlawful arrest, detention, and use of force, by law enforcement officials during or in connection with assemblies.<sup>133</sup> Both intentional and negligent action or inaction can amount to a violation of human rights. Law enforcement agencies and individual officials must be held accountable for their actions and omissions under domestic and, where relevant, international law and effective remedies must be provided to victims including implementation of specific measures to prevent recurrence of incidents in which unlawful force was used.

Commented [A73]: Please see Principal Comment #4.

102. All use of force by law enforcement officials should be recorded and reflected in a transparent report.<sup>134</sup> developed promptly by a competent and independent authority, with the required timelines for development of such report set out in applicable law or regulations. Where injury occurs, the report should contain sufficient information to establish whether the use of force was necessary and proportionate, and set out the details of the incident, including: the surrounding circumstances; the decision-making processes; measures taken to avoid the use of force and to de-escalate the situation; the type and manner

Commented [A74]: Please see Principal Comment #4.

<sup>125</sup> S/2009/693, annex, para. 62; and *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 7.3.7.

<sup>126</sup> ACHPR, *Guidelines on Policing Assemblies in Africa*, para. 21.2.4.

<sup>127</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 14.

<sup>128</sup> *Ibid.*; Principles 9 and 14; and General comment No. 36.

<sup>129</sup> *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 7.5.8.

<sup>130</sup> CCPR/C/ISR/CO/3, para. 9; CCPR/C/UZB/CO/3, para. 8; and *Olmedo v. Paraguay* (CCPR/C/104/D/1828/2008), para. 7.5.

<sup>131</sup> Rome Statute of the International Criminal Court, 1998, article 7.

<sup>132</sup> European Court of Human Rights, *Hentschel and Stark v. Germany* (Application No. 47274/15), judgment of 9 November 2017, para. 91.

<sup>133</sup> CCPR/C/COD/CO/4, paras. 43–44; CCPR/C/BHR/CO/1, para. 36. See also *The Minnesota Protocol on the investigation of potentially unlawful death (2016)* (United Nations publication, Sales No. E.91.IV.1).

<sup>134</sup> *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, paras. 3.3 and 3.5.



of force employed, including specific weaponry; the reasons for the use of force; its effectiveness; and the consequences.<sup>135</sup>

103. Any deployment of plainclothes officers in assemblies must be reasonably necessary in the circumstances and such officers (or other State agents) must never incite violence on the part of other participants, for example, by acting as *agents provocateurs*.<sup>136</sup>

104. Where private security service providers are used by the authorities for law enforcement tasks during an assembly, the State remains responsible for their actions.<sup>137</sup> This is in addition to the accountability of the private security service providers under domestic and, as and where relevant, international law. States are obligated to regulate and control the actions of private security companies employed during assemblies in conformity with international law standards.<sup>138</sup> In any event, the nature and consequences of acts by private security service providers in law enforcement should be clarified by the authorities in national legislation and their use of force strictly regulated.<sup>139</sup>

105. The use of recording devices by law enforcement officials during assemblies, including through body-worn cameras, may play an important role in securing accountability. However, the authorities should have clear and publicly available guidelines to ensure that their use is consistent with international standards on privacy and does not have a chilling effect on participation in assemblies.<sup>140</sup>

106. The State is fully responsible for any remotely controlled weapons systems that it uses during an assembly. Such methods of force delivery may escalate tensions and should be used only with great caution. Fully autonomous weapons systems, where lethal or less-lethal force can be used against assembly participants without meaningful human intervention once a system has been deployed, shall never be used for law enforcement during an assembly.<sup>141</sup>

## 7. Assembly during states of emergency and armed conflict

107. The right of peaceful assembly is not listed as a non-derogable right in article 4 (2) of the Covenant, but some of the other rights potentially applicable to assemblies, such as those provided in articles 6, 7 and 18, are non-derogable. If States derogate from the Covenant in response, for instance, to a mass demonstration including acts of violence, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation.<sup>142</sup>

108. If not derogated from, the right of peaceful assembly continues during states of emergency. ~~Restrictions consistent with art. 21 will be generally be adequate to address specific concerns giving rise to a state of emergency. The possibility of restricting the right of peaceful assembly is generally sufficient in such cases~~ and no derogation from the provisions in question would be justified by the exigencies of the situation.<sup>143</sup>

109. ~~During situations of armed conflict, assemblies that are civilian in nature remain governed by the rules governing the use of force by law enforcement during situations of armed conflict, even if acts of violence short of direct participation in hostilities occur in~~

**Commented [A75]:** As currently drafted, this sentence is difficult to follow, and may be read to mean that restrictions on the right of peaceful assembly are generally permissible in these cases.

<sup>135</sup> *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, paras. 3.4, 3.5.

<sup>136</sup> European Court of Human Rights, *Ramanauskas v. Lithuania*, judgment of 5 February 2008, para. 54.

<sup>137</sup> Inter-American Court of Human Rights, *Rochela Massacre v. Colombia*, judgment of 11 May 2007, para. 102.

<sup>138</sup> *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 3.2; and General comment No. 36, para. 15.

<sup>139</sup> *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 3.2.

<sup>140</sup> CCPR/C/CHN-HKG/CO/3, para. 10; CCPR/C/CHN-MAC/CO/1, para. 16.

<sup>141</sup> A/HRC/31/66, para. 67.

<sup>142</sup> General comment No. 29 on derogations from provisions of the Covenant during a state of emergency, para. 5.

<sup>143</sup> *Ibid.*

them.<sup>144</sup> In all decisions, the safety and protection of assembly participants and the broader public should be a primary consideration.

110. ~~Specific requirements under international humanitarian law govern the use of force against civilians participating directly in hostilities during an armed conflict, including such~~ Civilians participating in an assembly during an armed conflict are not protected from being targeted with lethal force, for such time as they are participating directly in hostilities, as that term is understood under international humanitarian law, and to the extent that they are not otherwise protected under international law from attack.<sup>145</sup> Any use of force is subject to the rules of military necessity, precaution and proportionality in attack, discrimination and proportionality.

#### 8. Relationship between article 21 and other provisions of the Covenant and other legal regimes

111. The full protection of the right of peaceful assembly depends on the protection of a range of rights. The right to life (art. 6)<sup>146</sup> and the right not to be subjected to cruel, inhuman or degrading treatment (art. 7)<sup>147</sup> may both be implicated if law enforcement officials use excessive force. Restrictions on people's ability to travel in order to participate in assemblies, including to travel abroad (art. 12 (2)), and to participate in marches and other moving assemblies, may violate their freedom of movement (art. 12 (1)). Decisions restricting the exercise of assembly rights fall under the protection of fair trial rights (art. 14 (1)).<sup>148</sup>

112. The surveillance of those involved in assemblies and other data-gathering may violate their right to privacy (art. 17). Religious assemblies may also be protected under the freedom to manifest one's religion or beliefs (art. 18).<sup>149</sup> Freedom of assembly is more than a manifestation of freedom of expression (art. 19 (2)),<sup>150</sup> but it has an expressive element and the rationale for the recognition of these two rights and the acceptable restrictions overlap in many ways. Freedom of information (art. 19 (2)) underlies the ability of the public to know about the legal and administrative framework within which they participate in assemblies and enables them to hold public officials accountable. Freedom of association (art. 22) also protects collective action, and restrictions on this right often affect freedom of assembly. Like freedom of expression, the right of political participation (art. 25) is closely linked to peaceful assembly.<sup>151</sup> The right to non-discrimination protects participants against discriminatory practices in the context of assemblies (art. 26).

113. ~~At the same time, participants participation in peaceful assemblies may in some instances have consequences for the enjoyment of certain rights by others must not infringe on the rights of others.~~ This may for example include their freedom of movement (art. 12 (1)). Socio-economic rights, such as the right to health or to education, may be implicated by assemblies in or proximate to amenities such as hospitals or educational facilities.

114. [The right of peaceful assembly is often exercised with the aim of advancing the implementation of other fundamental human rights, as well as other norms and principles of international law. In such cases, the duty to respect and ensure the right of peaceful assembly derives its legal justification from the intrinsic value of the right, but also from the importance of the other rights, norms and principles whose implementation it advances.]

**Commented [A76]:** This sentence is difficult to follow as drafted, and may be read to imply that the rules governing law enforcement during situations of armed conflict do not apply in case of violence constituting direct participation in hostilities. Given that this sentence explicitly addresses "assemblies that are civilian in nature," there is no need to consider acts of violence constituting direct participation in hostilities.

**Commented [A77]:** Please see Principal Comment #4.

**Commented [A78]:** Please see Principal Comment #8.

<sup>144</sup> Cf. A/HRC/40/CRP.2, summary and para. 106.

<sup>145</sup> See Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva, International Committee of the Red Cross, 2009), pp. 41–45.

<sup>146</sup> *Olmedo v. Paraguay*, para. 7.5.

<sup>147</sup> *Benítez Gamarra v. Paraguay* (CCPR/C/104/D/1829/2008), para. 7.4.

<sup>148</sup> *Evezov et al. v. Belarus*, paras. 3.3 and 8.9.

<sup>149</sup> Article 18 does not allow restrictions on the ground of "national security". See General comment No. 22, para. 8.

<sup>150</sup> The Committee has often dealt with assembly cases under article 19 without finding a violation of article 21, e.g., *Komarovsky v. Belarus* (CCPR/C/109/D/1839/2008), while in others it has found a violation of both articles 19 and 21, e.g., *Derzhavtsev v. Belarus* (CCPR/C/115/D/2076/2011).

<sup>151</sup> *Sudalenko v. Belarus*, para. 8.6.

