
**Submission of the Institute for NGO Research Comments on
General Comment 37: Article 21 - The Right of Peaceful Assembly**

The Institute for NGO Research, an NGO in special consultative status with ECOSOC since 2013, presents these comments to the Human Rights Committee. We hope these comments will aid the Committee in the drafting of General Comment 37.

Paragraph 4 includes bracketed language proposing two options: [“a publicly accessible/the same] place”. We believe that such options are unnecessary and the sentence should conclude after “common expressive purpose.” One could foresee a group of people gathering in a private location for many purposes, including recreational, political, or religious reasons. Many countries have sought to prevent such gatherings (for instance religious meetings in China) and they should be protected. All gatherings, whether in public or private areas, must be regulated in accordance with a human rights framework that balances the rights of others and society as a whole. In addition, assemblies on private property must also take into account and should be weighed heavily in favor of the rights and wishes of the property owner/s.

Paragraph 7 states “to the extent that these events may create security or other risks”. The committee should add language: “to the extent that these events impinge on the rights and property of others, create security, public health or safety, or other risks”. It is important that while the right to peaceful assembly must be protected, so too must the rights of those impacted by such assemblies.

The Committee should define what it means by “unwarranted interference” in Paragraph 8. In addition, we believe the Committee should adopt a “sliding scale” or “levels of scrutiny” approach rather than a “narrowly drawn” approach to restrictions. For instance, if an assembly is aimed at blocking roads, the level of restrictions allowed should depend upon the number of people inconvenienced or prevented from movement. In other words, the more people impacted, a higher level of restriction might be warranted. In addition, if the road was a main thoroughfare to a hospital or school, that should also weigh in favor of greater government interference. Where necessary and throughout, the Comment should reference later relevant paragraphs, such as paragraph 40, to provide more guidance.

Paragraph 13 is too broad. One should not be allowed to engage in public assembly on privately-owned property without the consent of the property owner. Whether the privately-owned property is publicly accessible is irrelevant. The sentence beginning “Assemblies can be held” should be deleted.

The Committee should clarify what it means in Paragraph 18 that “civil disobedience or direct-action campaigns are in principle covered by article 21.” If protestors are engaged in harassment, destruction of property, or other violations of law, even if such conduct does not

rise to the level of violence, article 21 protections should not immunize participants from being held accountable for breaches of law.

The Committee should choose option two described in Paragraph 22.

Paragraph 26: The Committee should better define “unwarranted interference”, “compelling justification”, “sanction”, and “legitimate cause”.

In Paragraph 31, “appropriate” should be used rather than “possible”.

In Paragraph 35, the Committee must elaborate further on the statement that “private entities and the broader society, however, may be expected accept some level of disruption, if this is required for the exercise of the right of peaceful assembly.” In particular, the terms “expected to accept” and “level of disruption”. The sentence regarding “business entities” is a non-sequitur and should be removed. Business entities have no greater or lesser responsibility than any other individual, non-governmental member or entity of society. Nor should businesses be afforded less protection for their individual and property rights simply because they are “businesses”.

Paragraph 53 should include the phrase “property rights”.

In Paragraph 67, the Committee should provide more support for its contention that there is “increased privatization of public spaces” before using such statement as justification for infringing on private property rights. Citing a US Supreme Court case from 1946 and an ECHR case where those protesting also had direct property interests in a newly privatized area is insufficient to support the contention. The Committee also needs to better explain what it means by “no other reasonable way to convey their message to their target audience”. Distinctions might be made, however, when the “private” owner is a governmental entity.

In Paragraph 81, the Committee should add the word “necessarily” to the phrase in the first sentence “should not in itself be used”. The sentence should read “should not necessarily in itself be used”. There are some cases where it could be foreseen that failure to notify authorities could rise to the level of civil or criminal responsibility or necessitate dispersing the assembly.

Respectfully submitted,

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