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Open Net Korea’s comments on the draft General Comment 34 on Right to Peaceful Assembly

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Korea went through a revolutionary experience in assembly and demonstration rights back in December of 2016 when people brought down the then sitting president through massive demonstrations in the center of the city, all the way up to a few hundred meters away from the presidential palace. It is from this experience that we would like to make the following suggestions and input on the draft General Comment 37.

**1. It is of utmost importance for the law to reflect explicitly the principle that “there is no illegal assembly as long as it is peaceful” not just for law enforcement or criminal purposes but also in the sense of tort damages.**

Many assemblies are branded illegal and then subjected to on-site dispersal or after-the-fact civil damages lawsuits or criminal prosecutions against the organizers. As the draft states assemblies cannot be subject to authorization (Paras. 18, 81, 84) but only to notification requirement, which can be triggered only for the purpose of protection and sanitation of the assembly participants themselves. This means that assemblies cannot be dispersed or become the reason of civil or criminal liability for reason of failure to give notifications except the administrative fines proportional to the inconvenience of having to gather the police force and sanitation crew late, who will protect and clean up after the assembly.

The current draft Para. 81 mentions only protection from dispersal and criminal liability but does not address the threat of after-the-fact civil damages liability that can chill right to peaceful assembly. We propose the following addition:

Before change: Para. 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.

After change: Para 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 **[or civil damages liability].**

**2. We need more detailed instructions on authorization systems masquerading as notification systems.**

Almost all notification systems are subject to abuse because they are usually branded as “permits”, which can be denied for all sorts of reasons. Instead of simply requiring notifications and requiring authorization systems to work like notification systems, the draft should address more closely this abuse. We propose adding the following paragraphs:

Para. 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. 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. Notification regimes, for their part, must not in practice function as authorization systems.

*Para. 84-A “Assembly permits” can be denied only when it is imminently clear that violence will result where violence does not include disruption of vehicular traffic, generation of noise and garbage, presence of the police, heckling passers-by, or other unavoidable effects of the assembly.*

*Para. 84-B Denial of assembly permit 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 or civil damages liability unless the assembly actually caused violence.*

**3. Preservation of vehicular traffic should not be overriding reasons for designating certain no-assembly zones, or dispersing the assembly or denying an assembly permit or otherwise penalizing the assembly after the fact.**

No-assembly zones present a thorny issue for right to assembly when coordinated with authorization systems because it allows denying permits without any such legitimate basis as likelihood of violence. One of the most frequent and politically convenient reasons for zoning down assemblies is disruption of ordinary vehicular traffic. Either the statute itself excludes arterial motor ways or the authorities deny permits, citing that as the reason. To that effect, we propose a following paragraph.

Para. 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. To the extent that assemblies in such places are prohibited, the restrictions must be specifically justified and narrowly circumscribed.

Para. 66-1. Vehicular traffic should not be a reason for designating certain no-assembly zones such as “arterial motorways”, or denying a permit, dispersing the assembly, or civilly or criminally holding liable the organizers. Vehicles and pedestrians are equally legitimate user of all parts of public roads whether they are participating in the assembly or not. If a large numbers of assembly participants apply to have an assembly which will clog the vehicular road but only affecting a small number of vehicles, the permit should be granted.

**4. Assembly as hate speech should be addressed with care.**

Para 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 advocacyof national, racial or religious hatred that constitutes incitement to discriminationor hostility, in addition to violence (art. 20 (2)). Participation in assemblies where the expressive purpose is covered by article 20 does not fallwithin the scope of, and is not protected by, article 21. Such assemblies must be prohibited.]

A blanket assertion that assemblies must be prohibited for reasons of harmful content presents a threat to the right to assembly. An assembly is different from speech in that people of differing beliefs come together to say different things which sometimes conflict with one another. An assembly is a platform where people of various ideas come together. It is under this concept of assembly-as-a-platform that prior authorization system is prohibited just as a newspaper cannot be shut down for risk of carrying defamatory articles. Article 20 of ICCPR requires prohibiting hate speech already and use of criminal or administrative sanctions against hate speech must be granularily carried out, instead of banning the entire assemblies. We propose to delete this paragraph.