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**Human Rights Committee****General comment No. 37****Article 21: right of peaceful assembly\*****I. 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 related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism. 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 to recognize and realize a wide range of other rights, including economic, social and cultural rights. It is of particular importance to marginalized individuals and groups. A failure to respect and ensure the right of peaceful assembly is typically 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 terms in other international instruments,<sup>1</sup> and its content 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

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\* Adopted by the Committee at its 129<sup>th</sup> session (29 June to 24 July 2020).

<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); and the African Charter on Human and Peoples’ Rights (art. 11). The Arab Charter on Human Rights protects the right for citizens (art. 28). Specific obligations relating to participation in peaceful assemblies can also be found in the Convention on the Rights of the Child, (art. 15); the Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (d) (ix)); and the African Charter on the Rights and Welfare of the Child (art. 8).

<sup>2</sup> For examples from the regional mechanisms, see Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights & European Commission for Democracy Through Law (Venice Commission), *Guidelines on Freedom of Peaceful Assembly* 3<sup>rd</sup> edition (2019); the African Commission on Human and Peoples’ Rights (ACHPR), *Guidelines on Freedom of Association and Assembly in Africa* (2017); ACHPR, *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (2017); Office of the Special Rapporteur for

international law to recognize the right of peaceful assembly, the vast majority of States also recognize the right in their national constitutions.<sup>3</sup>

4. The right of peaceful assembly protects the non-violent gathering by persons for specific purposes, principally expressive ones.<sup>4</sup> It constitutes an individual right that is exercised collectively.<sup>5</sup> Inherent to the right is thus an associative element.

5. Everyone has the right of peaceful assembly: citizens and non-citizens alike. It may be exercised by, for example, foreign nationals,<sup>6</sup> migrants (documented or undocumented),<sup>7</sup> asylum seekers and refugees,<sup>8</sup> as well as stateless persons.

6. Article 21 protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash-mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.

7. In many cases, peaceful assemblies do not pursue controversial 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 can sometimes be used to pursue contentious ideas or goals. Their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity.<sup>9</sup> These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent an event may create such disruptions or risks, these have to be managed within the framework of the Covenant.

8. The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination.<sup>10</sup> This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants. The second sentence of article 21 provides grounds for potential restrictions, but any such restrictions must be narrowly drawn. There are, in effect, limits on the restrictions that may be imposed.

9. The full protection of the right of peaceful assembly is possible only when other, often overlapping, rights are also protected, notably freedom of expression, freedom of association and political participation.<sup>11</sup> Protection of the right of peaceful assembly is often also dependent on the realization of a broader range of civil and political as well as economic, social and cultural rights. Where individuals' conduct places them outside the scope of the protection of article 21, for example because they are behaving violently, they retain their other rights under the Covenant, subject to the applicable limitations and restrictions.

10. The way in which assemblies are conducted and their context changes over time. This may in turn affect how they are approached by the authorities. For example, emerging communication technologies offer the opportunity to assemble either wholly or partly online and often play an integral role in organizing, participating in and monitoring physical gatherings, which means that interference with such communications can impede assemblies. While surveillance technologies can be used to detect threats of violence and thus to protect

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Freedom of Expression of the Inter-American Commission on Human Rights, *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State* (2019).

<sup>3</sup> A total of 184 of the 193 Members of the United Nations recognize the right of peaceful assembly in their constitutions, see [www.rightofassembly.info](http://www.rightofassembly.info).

<sup>4</sup> C.f. *Kivenmaa v. Finland* (CCPR/C/50/D/412/1990), para. 7.6; *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.

<sup>5</sup> Cf. General comment No. 31 (2004), para. 9.

<sup>6</sup> General comment No. 15 (1986), paras. 1–2; and CCPR/C/KWT/CO/3, para. 42.

<sup>7</sup> CCPR/C/DOM/CO/6, para. 32.

<sup>8</sup> CCPR/C/NPL/CO/2, para. 14.

<sup>9</sup> CCPR/C/KOR/Q/4, para. 26.

<sup>10</sup> ICCPR art. 2 (1).

<sup>11</sup> Cf. A/HRC/39/28, para. 14.

the public, they can also infringe on the right to privacy and other rights of participants and bystanders and have a chilling effect. Moreover, there is increased private ownership and other forms of control of publicly accessible spaces and communication platforms. Considerations such as these need to inform a contemporary understanding of the legal framework article 21 requires.

## II. Scope of the right of peaceful assembly

11. Establishing whether or not someone's participation in an assembly is protected by article 21 entails a two-stage process. It must first be established whether or not the conduct of the person in question falls within the *scope* of the protection offered by the right, in that it amounts to participation in a "peaceful assembly" (as described in this section). If so, the State must respect and ensure the rights of the participants (as described in section 3). Second, it must be established whether or not any *restrictions* applied to the exercise of the right are legitimate in that context (as described in section 4).

12. Participating in an "assembly" entails organising or taking part in a gathering of persons for a purpose such as expressing oneself, conveying a position on a particular issue or exchanging ideas. The gathering can also be intended to assert or affirm group solidarity or identity. Assemblies may, in addition to having such aims, serve other goals, such as an entertainment, cultural, religious or commercial objective, and still be protected by article 21.

13. While the notion of an assembly implies there will be more than one participant in the gathering,<sup>12</sup> a single protester enjoys comparable protections under the Covenant, for example under article 19. Although the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, article 21 protection also extends to remote participation in, and organisation of, assemblies, for example online.<sup>13</sup>

14. Peaceful assemblies are often organized in advance, allowing time for the organisers to notify the authorities to make the necessary preparations. However, spontaneous assemblies, typically direct responses to current events, whether coordinated or not, are equally protected by article 21. Counter-assemblies occur when one assembly takes place to express opposition to another. Both assemblies can fall within the scope of the protection of article 21.

15. A "peaceful" assembly stands in contradistinction to one characterized by widespread and serious violence. The terms "peaceful" and "non-violent" are thus used interchangeably in this context. The right of peaceful assembly may by definition not be exercised using violence. "Violence" in the context of article 21 typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property.<sup>14</sup> Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to "violence".

16. If the conduct of participants in an assembly is peaceful, the fact that certain domestic legal requirements pertaining to an assembly have not been met by its organisers or participants does not, on its own, place the participants outside the scope of the protection of article 21.<sup>15</sup> Collective civil disobedience or direct-action campaigns can be covered by article 21, provided they are non-violent.<sup>16</sup>

17. There is not always a clear dividing line between assemblies that are peaceful and those that are not, but there is a presumption in favour of considering assemblies to be peaceful.<sup>17</sup> Moreover, isolated acts of violence by some participants should not be attributed to others,

<sup>12</sup> *Coleman v. Australia* (CCPR/C/87/D/1157/2003), para. 6.4.

<sup>13</sup> A/HRC/41/41.

<sup>14</sup> C.f. OSCE & Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 51.

<sup>15</sup> C.f. European Court of Human Rights, *Frumkin v. Russia* (application No. 74568/12), judgment of 5 January 2016, para. 97.

<sup>16</sup> C.f. CCPR/C/CHN-MAC/CO/1, para. 16.

<sup>17</sup> A/HRC/31/66, para. 18.

the organisers or to the assembly as such.<sup>18</sup> Thus, some participants in an assembly may be covered by article 21, while others in the same assembly are not.

18. The question of whether or not an assembly is peaceful must be answered with reference to violence that originates from the participants. Violence against participants in a peaceful assembly by the authorities, or by *agents provocateurs* acting on their behalf, does not render the assembly non-peaceful. The same applies to violence by members of the public aimed at the assembly, or by participants in counter-assemblies.

19. The conduct of specific participants in an assembly may be deemed violent if authorities can present credible evidence that, before or during the event, those participants are inciting others to use violence, and such actions are likely to cause violence; the participants have violent intentions and plan to act on them; or violence on their part is imminent.<sup>19</sup> Isolated instances of such conduct will not suffice to taint an entire assembly as non-peaceful, but where this is manifestly widespread within the assembly, participation in the gathering as such is no longer protected under article 21.

20. The carrying by participants of objects that are or could be viewed as weapons or of protective equipment such as gas-masks or helmets is not necessarily sufficient to deem those participants' conduct violent. That has to be determined on a case-by-case basis, dependent on, among other considerations, domestic regulation on the carrying of weapons (especially firearms), local cultural practices, whether there is evidence of violent intent, and the risk of violence presented by the presence of such objects.

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

21. 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>20</sup> The obligation of States parties regarding the right of peaceful assembly thus comprises these various elements, though the right may in some cases be restricted according to the criteria of article 21.

22. States must leave it to the participants freely to determine the purposes or any expressive content of an assembly. The approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be “content neutral”<sup>21</sup> and not be based on the identity of the participants or their relationship with the authorities. Moreover, while the “time, place and manner” of assemblies may under some circumstances be the subject of legitimate restrictions under article 21, given the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within “sight and sound” of the target audience.<sup>22</sup>

23. The obligation to respect and ensure peaceful assemblies imposes negative as well as positive duties on States before, during and after assemblies. The negative duty entails *no unwarranted interference* with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organisers without legitimate cause.

<sup>18</sup> C.f. Inter-American Court of Human Rights, *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, Judgment of 28 November 2018, Series C No. 371, para. 175; European Court of Human Rights, *Frumkin v. Russia*, para. 99.

<sup>19</sup> C.f. Rabat Plan of Action (2012), A/HRC/22/17/Add.4, appendix, para. 29(f).

<sup>20</sup> General comment No. 31.

<sup>21</sup> See *Alekseev v. Russian Federation*, (CCPR/C/109/D/1873/2009), para. 9.6. See also *Amelkovich v. Belarus* (CCPR/C/125/D/2720/2016), para. 6.6; CCPR/C/GNQ/CO/1, para. 54.

<sup>22</sup> *Strizhak v. Belarus*, (CCPR/C/124/D/2260/2013), para. 6.5.

24. States parties moreover have certain positive duties to *facilitate* peaceful assemblies, and to make it possible for participants to achieve their objectives.<sup>23</sup> States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic, or provide security. Where needed, States must also *protect* participants against possible abuse by non-State actors, such as interference or violence by other members of the public,<sup>24</sup> counter-demonstrators and private security providers.

25. States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status, disability, sexual orientation or gender identity, or other status.<sup>25</sup> Particular efforts must be made to ensure equal and effective facilitation and protection of the right of peaceful assembly of individuals who are members of groups who are or have been subjected to discrimination, or who may face particular challenges in participating in assemblies.<sup>26</sup> States moreover have a duty to protect participants from all forms of discriminatory abuses or attacks.<sup>27</sup>

26. 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.<sup>28</sup> States must in principle take a content-neutral approach to counter-assemblies, which must be allowed to take place, as far as possible, within sight and sound of the assemblies against which they are directed.

27. The possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly.<sup>29</sup> States are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to protect all participants and to allow such assemblies to take place in an uninterrupted manner.<sup>30</sup>

28. 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 recognize the right of peaceful assembly, clearly set out the duties and responsibilities of all functionaries involved, be aligned with the relevant international standards, and be publicly accessible. States must ensure public awareness about the law and relevant regulations, including any procedures to be followed by those wishing to exercise the right; who the responsible authorities are; the rules applicable to those officials; and the remedies available for alleged violations of rights.

29. States parties must ensure independent and transparent oversight of all bodies involved with peaceful assemblies, including through timely access to effective remedies, including judicial remedies or national human rights institutions, with a view to upholding the right, before, during and after an assembly.

<sup>23</sup> Since its decision in *Turchenyak v. Belarus* (CCPR/C/108/D/1948/2010), the Committee has often repeated that steps taken by States in response to an assembly “should be guided by the objective to facilitate the right” (para. 7.4). Also see CCPR/C/BEN/CO/2, para. 33. C.f. A/HRC/20/27, para. 33; Human Rights Council Resolution 38/11, OP 4.

<sup>24</sup> *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6.

<sup>25</sup> CCPR/C/GEO/CO/4, para. 8; CCPR/C/MNG/CO/6, para. 11; CCPR/C/RUS/CO/7, para. 10; CCPR/C/PRY/CO/3, para. 9. C.f. CRC/C/KEN/CO/3-5 paras. 27–28; United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), art. 2.

<sup>26</sup> A/HRC/31/66, para. 16.

<sup>27</sup> CCPR/C/CHL/CO/6, para. 19. See also *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), para. 10.4.

<sup>28</sup> C.f. European Court of Human Rights, *Plattform “Ärzte für das Leben” v. Austria* (application No. 10126/82), judgment of 21 June 1988, para. 32.

<sup>29</sup> C.f. ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 70 (a).

<sup>30</sup> See also paragraph 52 below.

30. The role of journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies, is of particular importance for the full enjoyment of the right of peaceful assembly, and they are entitled to protection under the Covenant.<sup>31</sup> They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not be met with reprisals or other harassment, and their equipment must not be confiscated or damaged.<sup>32</sup> Even if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor. It is a good practice for independent national human rights institutions and non-governmental organizations to monitor assemblies.

31. States parties hold the primary responsibility for the realization of the right of peaceful assembly. However, business enterprises have a responsibility to respect human rights, including the right of peaceful assembly, of, for example, communities affected by their activities and their employees.<sup>33</sup> Private entities and the broader society may be expected to accept some level of disruption as a result of the exercise of the right.

32. Given that peaceful assemblies often have expressive functions, and political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.<sup>34</sup>

33. Article 21 and its related rights do not only protect participants while and where an assembly is ongoing. Associated activities, conducted by an individual or by a group, outside the immediate context of the gathering but which are integral to making the exercise meaningful, are also covered. The obligations of States parties thus extend to actions such as participants' or organisers' mobilisation of resources; planning; dissemination of information about an upcoming event;<sup>35</sup> preparation for and travelling to the event;<sup>36</sup> communication between participants leading up to and during the assembly; broadcasting of or from the assembly; and leaving the assembly afterwards. These activities may, like participation in the assembly itself, be subjected to restrictions, but these must be narrowly drawn. Moreover, no one should be harassed or face other reprisals as a result of their presence at or affiliation to a peaceful assembly.

34. Many associated activities happen online or otherwise rely upon digital services. Such activities are also protected under article 21. States parties must not, for example, block or hinder Internet connectivity in relation to peaceful assemblies.<sup>37</sup> The same applies to geo-targeted or technology-specific interference with connectivity or access to content. States should ensure that the activities of Internet service providers and intermediaries do not unduly restrict assemblies or the privacy of assembly participants. Any restrictions on the operation of information dissemination systems must conform with the tests for restrictions on freedom of expression.<sup>38</sup>

35. While all organs of State carry the obligation to respect and ensure the right of peaceful assembly, decisions on assemblies are often taken at local level. States must therefore ensure adequate training and resources for officials involved in these decisions at all levels of government.

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

36. While the right of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions.<sup>39</sup> Authorities must be able to show that any

<sup>31</sup> *Zhagiparov v. Kazakhstan* (CCPR/C/124/D/2441/2014), paras. 13.2–13.5. C.f. General Assembly resolution 53/1, annex.

<sup>32</sup> CCPR/C/MRT/CO/1, para. 22. See also General Assembly resolution 66/164, OP 6.

<sup>33</sup> Guiding Principles on Business and Human Rights, A/HRC/17/31, annex.

<sup>34</sup> General comment No. 34, paras. 34, 37–38 and 42–43. See also CCPR/C/LAO/CO/1, para. 33.

<sup>35</sup> *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008), para. 9.3.

<sup>36</sup> *Evrezov and others v. Belarus* (CCPR/C/112/D/1999/2010 and Corr.1), para. 8.5.

<sup>37</sup> CCPR/C/CMR/CO/5, para. 41.

<sup>38</sup> General comment No. 34, para. 34.

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

restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21, as discussed below. Where this onus is not met, article 21 is violated.<sup>40</sup> 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 must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.

37. The prohibition of a specific assembly can be considered only as a measure of last resort. Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least-intrusive measures. States should also consider allowing an assembly to take place and deciding afterwards whether measures should be taken regarding possible transgressions during the event, rather than imposing prior restraints in an attempt to eliminate all risks.<sup>42</sup>

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

39. 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 decisions 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 their enforcement.<sup>43</sup>

40. Article 21 provides that any restrictions must be “necessary in a democratic society”. Restrictions must therefore be *necessary* and *proportionate* in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient.<sup>44</sup> Such restrictions must be appropriate responses to a pressing social need, related to one of the permissible grounds in article 21. They must also be the least intrusive among the measures that might serve the relevant protective function.<sup>45</sup> Moreover, they have to be proportionate, which requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering.<sup>46</sup> If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible.

41. 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.

42. The “interests of national security” may serve as a ground for restrictions if such restrictions are necessary to preserve the State’s capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force.<sup>47</sup> This threshold will only exceptionally be met by assemblies that are “peaceful”. Moreover, where the very reason that national security has deteriorated is the suppression of

<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.

<sup>42</sup> C.f. OSCE & Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, paras. 132, 220–22.

<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> General comment No. 34, para. 34.

<sup>45</sup> *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.4.

<sup>46</sup> *Ibid.*, paras. 7.4, 7.6. C.f. OSCE & Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 131.

<sup>47</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.

human rights, this cannot be used to justify further restrictions, including on the right of peaceful assembly.<sup>48</sup>

43. For the protection of “public safety” to be invoked as a ground for restrictions on the right of peaceful assembly,<sup>49</sup> it must be established that the assembly creates a real and significant risk to the safety of persons (to life or security of person) or a similar risk of serious damage to property.<sup>50</sup>

44. “Public order” refers to the sum of the rules that ensure the proper 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>51</sup> States parties should not rely on a vague definition of “public order” to justify over-broad restrictions on the right of peaceful assembly.<sup>52</sup> Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration. “Public order” and “law and order” are not synonyms, and the prohibition of “public disorder” in domestic law should not be used unduly to restrict peaceful assemblies.

45. 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 an assembly presents a substantial health risk to the general public or to the participants themselves.<sup>53</sup>

46. 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 understandings of morality deriving exclusively from a single social, philosophical or religious tradition<sup>54</sup> and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination.<sup>55</sup> Restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity.<sup>56</sup>

47. Restrictions imposed for the protection of “the rights and freedoms of others” may relate to the protection of Covenant or other human rights of people not participating in the assembly. At the same time, assemblies are a legitimate use of public and other spaces, and since they 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.<sup>57</sup>

48. In addition to the general framework for restrictions provided for in article 21 as discussed above, additional considerations are relevant to restrictions on the right of peaceful assembly. Central to the realisation of the right is the requirement that any restrictions, in principle, be content neutral, and thus not be related to the message conveyed by the assembly.<sup>58</sup> A contrary approach defeats the very purpose of peaceful assemblies as a potential tool of political and social participation that allows people to advance ideas and establish the extent of support they enjoy.

49. The rules applicable to freedom of expression should be followed when dealing with any expressive elements of assemblies. Restrictions on peaceful assemblies must thus not be

<sup>48</sup> Ibid., para. 32.

<sup>49</sup> See CCPR/C/MKD/CO/3, para. 19; *Alekseev v. Russian Federation*, para. 9.5.

<sup>50</sup> Siracusa Principles, para. 33.

<sup>51</sup> Ibid., para. 22.

<sup>52</sup> CCPR/C/KAZ/CO/1, para. 26; CCPR/C/DZA/CO/4, para. 45.

<sup>53</sup> C.f. European Court of Human Rights, *Cisse v. France* (application No. 51346/99), judgment of 9 April 2002.

<sup>54</sup> General comment No. 22, para. 8.

<sup>55</sup> General comment No. 34, para. 32.

<sup>56</sup> *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), paras. 10.5–10.6; *Alekseev v. Russian Federation*, para. 9.6.

<sup>57</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>58</sup> *Alekseev v. Russian Federation*, para. 9.6.



used, explicitly or implicitly, to stifle expression of political opposition to a government,<sup>59</sup> challenges to authority, including calls for democratic changes of government, the constitution, the political system, or the pursuit of self-determination. They should not be used to prohibit insults to the honour and reputation of officials or State organs.<sup>60</sup>

50. In accordance with article 20 of the Covenant, peaceful assemblies may not be used for propaganda for war (paragraph 1), or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (paragraph 2).<sup>61</sup> As far as possible, action should be taken in such cases against the individual perpetrators, rather than against the assembly as a whole. Participation in assemblies whose dominant message falls within the scope of article 20 must be addressed in conformity with the requirements posed for restrictions by articles 19 and 21.<sup>62</sup>

51. 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 directly and predominantly associated with incitement to discrimination, hostility or violence, appropriate restrictions should apply.<sup>63</sup>

52. 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 restriction; the assembly must be allowed to go ahead and its participants must be protected.<sup>64</sup> However, in the exceptional case where the State is manifestly unable to protect the participants from a severe threat to their safety, restrictions on participation in the assembly may be imposed. 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>65</sup> Less-intrusive restrictions, such as postponement or relocation of the assembly, must be considered before resort to prohibition.

53. 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 on a 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, or at whatever site is otherwise important to their purpose.<sup>67</sup>

54. Concerning restrictions on the *time* of assemblies: participants must have sufficient opportunity effectively to manifest their views or to pursue their other purposes.<sup>68</sup> Peaceful assemblies should generally be left to end by themselves. 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> Assemblies should not be limited solely because of their frequency. The timing, duration or frequency of a demonstration may, for example, play a central role in

<sup>59</sup> CCPR/C/MDG/CO/4, para. 51.

<sup>60</sup> CCPR/C/79/Add. 86, para. 18; General comment No. 34, para. 38.

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

<sup>62</sup> 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. See also 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> C.f. OSCE & Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 152. See also European Court of Human Rights, *Fáber v. Hungary* (application No. 40721/08), judgment of 24 October 2012, paras. 56–58.

<sup>64</sup> *Alekseev v. Russian Federation*, para. 9.6. See also paragraph 18 above.

<sup>65</sup> *Alekseev v. Russian Federation*, para. 9.6.

<sup>66</sup> C.f. OSCE & Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 132.

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

<sup>68</sup> C.f. 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; CCPR/C/TJK/CO/3, para. 49.

achieving its objective. However, the cumulative impact of sustained gatherings may be weighed in a proportionality assessment of a restriction. For example, certain assemblies held regularly at night in residential areas might have a significant impact on those living nearby.

55. As for restrictions on the element of *place*: peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets.<sup>70</sup> While rules concerning public access to some spaces, such as buildings and parks, may also limit the right to assemble in such places, the application of such restrictions to peaceful assemblies must be justifiable in terms of article 21. Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed, or the general public.<sup>71</sup> As a general rule, prohibitions on all assemblies anywhere in the capital;<sup>72</sup> in any public location except a single specified place, either in a city,<sup>73</sup> or outside the city centre;<sup>74</sup> or prohibitions on assemblies in “all the streets in the city”, may not be imposed.

56. The designation of the perimeters of places such as courts, parliament, sites of historical significance or other official buildings as areas where assemblies may not take place should generally be avoided, *inter alia* because these are public spaces. To the extent that assemblies in and around such places are restricted, this must be specifically justified and narrowly circumscribed.<sup>75</sup>

57. While gatherings in private spaces fall within the scope of the right of peaceful assembly,<sup>76</sup> the interests of others with rights in the property have to be given due weight. The question to what extent restrictions may be imposed on such a gathering depends on considerations such as whether the space is routinely publicly accessible, the nature and extent of the potential interference caused by the gathering with the rights in the property, whether those holding rights in the property approve of such use, whether the ownership of the space is contested through the gathering, and whether participants have other reasonable means to achieve the purpose of the assembly, in accordance with the sight and sound principle.<sup>77</sup> Access to private property may not be denied on a discriminatory basis.

58. As far as restrictions on the *manner* of peaceful assemblies are concerned: participants should be left to determine whether they want to use equipment such as posters or megaphones or musical instruments or other technical means such as projection equipment to convey their message. Assemblies may entail the temporary erection of structures, including sound systems, to reach their audience or otherwise achieve their purpose.<sup>78</sup>

59. In general, States parties should not limit the number of participants in assemblies.<sup>79</sup> 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, or where public health considerations dictate physical distancing.

60. The wearing of face-coverings or other disguises by assembly participants, such as hoods or masks, or taking other steps to participate anonymously may form part of the expressive element of a peaceful assembly, serve to counter reprisals, or to protect privacy, including in the context of new surveillance technologies. The anonymity of participants should be allowed unless their conduct presents reasonable grounds for arrest,<sup>80</sup> or there are

<sup>70</sup> C.f. Inter-American Commission on Human Rights, *Protest and Human Rights*, para. 72.

<sup>71</sup> CCPR/C/KOR/CO/4, para. 52; CCPR/C/KAZ/CO/1, para. 26.

<sup>72</sup> CCPR/C/DZA/CO/4, para. 45.

<sup>73</sup> *Turchenyak et al. v. Belarus*, para. 7.5.

<sup>74</sup> *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010), para. 8.5.

<sup>75</sup> *Zündel v. Canada* (CCPR/C/78/D/953/2000), para. 8.5.

<sup>76</sup> C.f. *Giménez v. Paraguay* (CCPR/C/123/D/2372/2014), para. 8.3; European Court of Human Rights, *Annenkov and others v. Russia* (application No. 31475/10), judgment of 25 July 2017, para. 122.

<sup>77</sup> C.f. European Court of Human Rights, *Appleby and others v. United Kingdom* (application No. 44306/98), judgment of 6 May 2003, para. 47.

<sup>78</sup> See *Frumkin v. Russia*, para. 107.

<sup>79</sup> CCPR/C/THA/CO/2, para. 39.

<sup>80</sup> C.f. OSCE & Venice Commission *Guidelines on Peaceful Assembly*, para. 153; ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 81.

other similarly compelling reasons.<sup>81</sup> The use of disguises should not in itself be deemed to signify violent intent.

61. While the collection of relevant information and data by authorities may under certain circumstances assist the facilitation of assemblies, this must not result in suppressing rights or creating a chilling effect. Any information gathering, whether by public or private entities, including through surveillance or the interception of communications, as well as the way in which data are collected, shared, retained and accessed, must strictly conform to applicable international standards, including on the right to privacy, and may never be aimed at intimidating or harassing participants or would-be participants in assemblies.<sup>82</sup> 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>83</sup>

62. The mere fact that a particular assembly takes place in public does not mean that participants' privacy cannot be violated. The right to privacy may be infringed, for example, by facial recognition and other technologies that can identify individual participants in a crowd.<sup>84</sup> The same applies to the monitoring of social media to glean information about participation in peaceful assemblies. Independent and transparent scrutiny and oversight must be exercised over the decision to collect personal information and data of those engaged in peaceful assemblies and over its sharing or retention, with a view to ensuring the compatibility of such actions with the Covenant.

63. The freedom of public officials to participate in peaceful assemblies shall 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>85</sup> and any such restrictions must comply with article 21.

64. Requirements for participants or organisers either to arrange for or to contribute toward the costs of policing or security,<sup>86</sup> medical assistance or cleaning,<sup>87</sup> or other public services associated with peaceful assemblies are generally not compatible with article 21.<sup>88</sup>

65. Organisers and participants are expected to comply with legal requirements made of an assembly, and they may be held accountable for their own unlawful conduct, including the incitement of others.<sup>89</sup> If, in exceptional circumstances, organisers are held accountable for damage or injuries for which they were not directly responsible, it must be confined to cases where evidence shows that they could reasonably have foreseen and prevented it.<sup>90</sup> It is good practice for organisers to appoint stewards or marshals where necessary, but this should not be a legal requirement.

66. Authorities may not require pledges or undertakings from individuals not to organise or participate in future assemblies.<sup>91</sup> Conversely, no one may be forced to participate in an assembly.<sup>92</sup>

67. Where criminal or administrative sanctions are imposed upon organisers of or participants in a peaceful assembly for their unlawful conduct, such sanctions must be proportionate, non-discriminatory in nature and must not be based upon ambiguous or overbroadly-defined offences, or suppress conduct protected by the Covenant.

68. While acts of terrorism must be criminalised in conformity with international law, the definition of such crimes must not be overbroad or discriminatory and must not be applied

<sup>81</sup> With respect to symbolic face-coverings, see paragraph 51 above.

<sup>82</sup> A/HRC/31/66, para. 73.

<sup>83</sup> CCPR/C/KOR/CO/4, paras. 42–43.

<sup>84</sup> C.f. A/HRC/44/24, paras. 33–34.

<sup>85</sup> C.f. OSCE & Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 110.

<sup>86</sup> CCPR/C/CHE/CO/4, para. 48.

<sup>87</sup> *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), paras. 8.2–8.3; CCPR/C/BLR/CO/5, para. 51 (a).

<sup>88</sup> C.f. ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 102 (b).

<sup>89</sup> A/HRC/31/66, para. 26.

<sup>90</sup> C.f. OSCE & Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 224.

<sup>91</sup> CCPR/C/KHM/CO/2, para. 22; CCPR/C/JOR/CO/5, para. 32.

<sup>92</sup> CCPR/C/TKM/CO/2, para. 44.

so as to curtail or discourage the exercise of the right of peaceful assembly.<sup>93</sup> The mere act of organising or participating in a peaceful assembly cannot be criminalized under anti-terrorism laws.

69. Recourse to courts or other tribunals to seek a remedy concerning restrictions must be readily available, including the possibility of appeal or review. The timeliness and duration of such proceedings against restrictions on an assembly must not jeopardize the exercise of the right.<sup>94</sup> The procedural guarantees of the Covenant apply in all such cases, and also to issues such as detention or the imposition of sanctions, including fines, in connection with peaceful assemblies.<sup>95</sup>

## V. Notification regimes

70. Having to apply for permission from the authorities undercuts the idea that peaceful assembly is a basic right.<sup>96</sup> Notification systems, entailing that those who intend to organize a peaceful assembly are required to inform the authorities in advance and provide certain salient details, are permissible to the extent necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others.<sup>97</sup> At the same time, this requirement must not be misused to stifle peaceful assemblies, and, like other interferences with the right, must be justifiable on the grounds in article 21.<sup>98</sup> The enforcement of notification requirements must not become an end in itself.<sup>99</sup> Notification procedures should be transparent, not unduly bureaucratic,<sup>100</sup> their demands on organisers must be proportionate to the potential public impact of the assembly concerned, and they should be free of charge.

71. A failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must 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. Where administrative sanctions are imposed on organisers for failure to notify, this must be justified by the authorities.<sup>101</sup> Lack of notification does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants.

72. Any notification requirements for pre-planned assemblies must be provided for in domestic law. The minimum period of advance notification might vary according to the context and level of facilitation required, but it should not be excessively long.<sup>102</sup> If restrictions are imposed following a notification, they should be communicated early enough to allow time for access to the courts or other mechanisms to challenge them. Any notification regime should exclude assemblies where the impact of a gathering on others can reasonably be expected to be minimal, for example because of its nature, location or limited size or duration. Notification must not be required for spontaneous assemblies where they do not allow enough time to provide notice.<sup>103</sup>

73. Where authorization regimes persist in domestic law, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the

<sup>93</sup> CCPR/C/SWZ/CO/1, para. 36; CCPR/C/BHR/CO/1, para. 29. See also A/HRC/40/52.

<sup>94</sup> CCPR/C/POL/CO/6, para. 23.

<sup>95</sup> *E.V. v. Belarus* (CCPR/C/112/D/1989/2010), para. 6.6.

<sup>96</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>97</sup> *Kivenmaa v. Finland*, para. 9.2. See also ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 72.

<sup>98</sup> *Ibid.* See also *Sekerko v. Belarus*, para. 9.4.

<sup>99</sup> *Popova v. Russian Federation*, para. 7.5.

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

<sup>101</sup> See, e.g., *Popova v. Russian Federation*, para. 7.4, 7.5. See also A/HRC/31/66, para. 23.

<sup>102</sup> CCPR/CO/83/KEN, para. 23; CCPR/C/CHE/CO/4, para. 48; CCPR/C/DZA/CO/4, para. 45.

<sup>103</sup> *Popova v. Russian Federation*, para. 7.5. See also European Court of Human Rights, *Éva Molnár v. Hungary*, para. 38.

absence of compelling reasons to do otherwise. Notification regimes, for their part, must not in practice function as authorization systems.<sup>104</sup>

## VI. Duties and powers of law enforcement agencies

74. Law enforcement officials involved in policing assemblies must respect and ensure the exercise of the fundamental rights of organisers and participants, while also protecting journalists,<sup>105</sup> monitors and observers, medical personnel and other members of the public, as well as public and private property, from harm.<sup>106</sup> The basic approach of the authorities should be to seek to facilitate peaceful assemblies where necessary.

75. Relevant 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 promoting preparedness, de-escalating tensions and resolving disputes.<sup>107</sup> While it is good practice for organisers and participants to engage in such contact, they cannot be required to do so.

76. Where the presence of law enforcement officials is required, the policing of an assembly should be planned and conducted with the objective of enabling the assembly to take place as intended, and with a view to minimizing the potential for injury to any person and damage to property.<sup>108</sup> The plan should detail the instruction, equipment and deployment of all relevant officials and units.

77. Generic contingency plans and training protocols should also be elaborated by relevant law enforcement agencies, in particular for the policing of assemblies of which the authorities are not notified in advance and which may affect public order.<sup>109</sup> 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.

78. Law enforcement officials should seek to de-escalate situations that might result in violence. They are obliged to exhaust non-violent means and to give a warning if it is absolutely necessary to use force, unless doing either would be manifestly ineffective. Any 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>110</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, guided by standards such as the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* and the *UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*.<sup>111</sup>

79. Only the minimum force necessary may be used where this is required for a legitimate law enforcement purpose during an assembly. Once the need for any use of force has passed, such as when a violent individual is safely apprehended, no further resort to force is permissible.<sup>112</sup> Law enforcement officials may not use greater force than is proportionate 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.<sup>113</sup> Domestic law must not grant officials largely unrestricted powers, for example to use “force” or “all necessary force” to disperse assemblies, or make under-protective generalisations, for example simply

<sup>104</sup> CCPR/C/UZB/CO/5, paras. 46–47; CCPR/C/JOR/CO/5, para. 32.

<sup>105</sup> CCPR/C/AGO/CO/1, para. 21; CCPR/C/GEO/CO/4, para. 12; and CCPR/C/KOR/CO/4, para. 52.

<sup>106</sup> A/HRC/31/66, para. 41.

<sup>107</sup> Ibid., para. 38.

<sup>108</sup> Human Rights Council resolution 38/11, preambular para. 10; A/HRC/26/36, para. 51.

<sup>109</sup> A/HRC/31/66, para. 37.

<sup>110</sup> See General comment No. 36, paras. 13–14.

<sup>111</sup> See also Code of Conduct for Law Enforcement Officials.

<sup>112</sup> Ibid., art. 3.

<sup>113</sup> Ibid., commentary to art. 3.

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 discriminatory basis.<sup>114</sup>

80. Only law enforcement officials trained in the policing of assemblies, including on the relevant human rights standards, should be deployed for that purpose.<sup>115</sup> Training should sensitise officials to the specific needs of individuals or groups in situations of vulnerability, which may in some cases include women, children, or persons with disabilities, when participating in peaceful assemblies. The military should not be used to police assemblies,<sup>116</sup> but if in exceptional circumstances and on a temporary basis they are deployed in support, they must have received appropriate human rights training and must comply with the same international rules and standards as law enforcement officials.<sup>117</sup>

81. All law enforcement officials responsible for policing assemblies must be suitably equipped, including where needed with appropriate and fit-for-purpose less-lethal weapons and protective equipment. States parties must ensure that all weapons, including less-lethal weapons, are subject to strict independent testing, ensure officers deployed with them receive specific training and evaluate and monitor their impact on the rights of those affected.<sup>118</sup> Law enforcement agencies must be alert to potentially discriminatory impacts of certain policing tactics, including in the context of new technologies, and address them.<sup>119</sup>

82. Preventive detention of targeted individuals, to keep them from participating in assemblies, may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly.<sup>120</sup> This is especially the case if detention lasts more than a few hours. Where domestic law permits such detention, it may be used only in the most exceptional cases,<sup>121</sup> for no longer than absolutely necessary and only where the authorities have proof of the intention 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>122</sup> Practices of indiscriminate mass arrest prior to, during or following an assembly, are arbitrary and thus unlawful.<sup>123</sup>

83. 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 reasonable suspicion of the commission or threat of a serious offence, and must not be used in a discriminatory manner.<sup>124</sup> The mere fact that authorities associate an individual with a peaceful assembly does not constitute reasonable grounds for stopping and searching them.<sup>125</sup>

84. Containment (“kettling”), where law enforcement officials encircle and close in a section of the participants, may be used only where it is necessary and proportionate to do so, in order to address actual violence or an imminent threat emanating from that section. Necessary law enforcement measures targeted against specific individuals are often preferable to containment. Particular care must be taken to contain, as far as possible, only people linked directly to violence and to limit the duration of the containment to the minimum necessary. Where containment is used indiscriminately or punitively, it violates the right of

<sup>114</sup> CCPR/C/MAR/CO/6, paras. 45–46; CCPR/C/BHR/CO/1, para. 55.

<sup>115</sup> CCPR/C/KHM/CO/2, para. 12; CCPR/C/GRC/CO/2, para. 42; and CCPR/C/BGR/CO/4, para. 38.

<sup>116</sup> CCPR/C/VEN/CO/4, para. 14; and ACHPR, *Guidelines on Policing Assemblies in Africa*, para. 3.2.

<sup>117</sup> Code of Conduct for Law Enforcement Officials, art. 1.

<sup>118</sup> General comment No.36, para. 14. See also UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, section 4; and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 2.

<sup>119</sup> CCPR/C/GBR/CO/7, para. 11; A/HRC/44/24, para. 32.

<sup>120</sup> CCPR/C/MKD/CO/3, para. 19.

<sup>121</sup> General comment No. 35, para. 15.

<sup>122</sup> C.f. European Court of Human Rights, *S., V. and A. v. Denmark* (application Nos. 35553/12, 36678/12 and 36711/12), judgment of 22 October 2018 (Grand Chamber), paras. 77 and 127.

<sup>123</sup> CCPR/C/CAN/CO/6, para. 15.

<sup>124</sup> CCPR/C/GBR/CO/7, para. 11; CCPR/C/USA/CO/4, para. 7.

<sup>125</sup> A/HRC/31/66, para. 43.

peaceful assembly, and may also violate other rights such as freedom from arbitrary detention and freedom of movement.<sup>126</sup>

85. Only in exceptional cases may an assembly be dispersed. Dispersal may be resorted to if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures such as targeted arrests, but in all cases the law enforcement rules on use of force must be strictly followed. Conditions for ordering the dispersal of an assembly should be set out in domestic law, and only a duly authorized official may order the dispersal of a peaceful assembly. 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>127</sup>

86. Where a decision to disperse is taken in conformity with domestic and international law, force should be avoided. Where that is not possible in the circumstances, only the minimum force necessary may be used.<sup>128</sup> As far as possible, any force used should be directed against a specific individual or group engaged in or threatening violence. Force likely to cause more than negligible injury should not be used against individuals or groups who are passively resisting.<sup>129</sup>

87. Less-lethal weapons affecting an area, such as tear gas and water cannon, tend to have indiscriminate effects. When such weapons are used, all reasonable efforts should be undertaken to limit risks such as causing a stampede or harming bystanders. They should only be used as a measure of last resort following a verbal warning, and with adequate opportunity given for assembly participants to disperse. Tear gas should not be used in confined spaces.<sup>130</sup>

88. Firearms are not an appropriate tool for the policing of assemblies,<sup>131</sup> and must never be used simply to disperse an assembly.<sup>132</sup> In order to comply with international law, any use of firearms by law enforcement officials in the context of assemblies must be limited to targeted individuals in circumstances in which it is strictly necessary to confront an imminent threat of death or serious injury.<sup>133</sup> Given the threat such weapons pose to life, this minimum threshold should also be applied to the firing of rubber-coated metal bullets.<sup>134</sup> Where law enforcement officials are prepared for the use of force, or violence is considered likely, the authorities must also ensure adequate medical facilities are available. It is never lawful to fire indiscriminately or to use firearms in fully automatic mode when policing an assembly.<sup>135</sup>

89. The State is responsible under international law for the actions and omissions of its law enforcement agencies. With a view to preventing violations, States should consistently promote a culture of accountability for law enforcement officials during assemblies. To enhance effective accountability, uniformed law enforcement officials should always display an easily recognisable form of identification during assemblies.<sup>136</sup>

90. States have an obligation to investigate effectively, impartially and in a timely manner any allegation or reasonable suspicion of unlawful use of force or other violations by law

<sup>126</sup> C.f. European Court of Human Rights, *Austin and others v. United Kingdom* (application Nos. 39629/09, 40713/09; and 41008/09), judgment of 15 March 2012 (Grand Chamber), para. 68.

<sup>127</sup> A/HRC/31/66, para. 62.

<sup>128</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 13; A/HRC/26/36, para. 75.

<sup>129</sup> UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, para. 2.10.

<sup>130</sup> S/2009/693, annex, para. 62; and UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, para. 7.3.7.

<sup>131</sup> ACHPR, *Guidelines on Policing Assemblies in Africa*, para. 21.2.4.

<sup>132</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 14.

<sup>133</sup> General comment No. 36, para. 12; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 9 and 14.

<sup>134</sup> UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, para. 7.5.8.

<sup>135</sup> A/HRC/31/66, paras. 60, 67(e). See also OHCHR/UNODC, *Resource Book on the Use of Force and Firearms in Law Enforcement* (2017) p. 96.

<sup>136</sup> C.f. European Court of Human Rights, *Hentschel and Stark v. Germany* (application No. 47274/15), judgment of 9 November 2017, para. 91; CAT/C/DEU/CO/6, para. 40.

enforcement officials, including sexual or gender-based violence, in the context of assemblies.<sup>137</sup> Both intentional and negligent action or inaction can amount to a violation of human rights. Individual officials responsible for violations must be held accountable under domestic and, where relevant, international law and effective remedies must be available to victims.<sup>138</sup>

91. All use of force by law enforcement officials should be recorded and reflected promptly in a transparent report. Where injury or damage occurs, the report should contain sufficient information to establish whether the use of force was necessary and proportionate, by detailing the incident, including the reasons for the use of force, its effectiveness, and the consequences.<sup>139</sup>

92. Any deployment of plainclothes officers in assemblies must be strictly necessary in the circumstances and such officers must never incite violence. Before conducting a search, making an arrest, or resorting to any use of force, plainclothes officers must identify themselves to the persons concerned.

93. The State is ultimately responsible for law enforcement during an assembly and may delegate tasks to private security providers only in exceptional circumstances. In such cases, the State remains responsible for their conduct.<sup>140</sup> This is in addition to the accountability of the private security service providers under domestic and, where relevant, international law.<sup>141</sup> The role and powers of private security service providers in law enforcement should be set out by the authorities in national legislation and their use of force and training strictly regulated.<sup>142</sup>

94. The use of recording devices by law enforcement officials during assemblies, including body-worn cameras, may play a positive role in securing accountability, if used judiciously. 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>143</sup> Participants, as well as journalists and monitors, also have the right to record law enforcement officials.<sup>144</sup>

95. The State is fully responsible for any remotely controlled weapons systems 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 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>145</sup>

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

96. The right of peaceful assembly is not listed as non-derogable in article 4 (2) of the Covenant, but other rights potentially applicable to assemblies, such as those provided in articles 6, 7 and 18, are non-derogable. State parties must not rely on derogation from the right of peaceful assembly if they can attain their objectives by imposing restrictions in terms of article 21.<sup>146</sup> If States derogate from the Covenant in response, for instance, to mass demonstrations that include 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 measures derogating

<sup>137</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>138</sup> A/RES/60/147, annex.

<sup>139</sup> UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, paras. 3.3–3.5.

<sup>140</sup> General comment No. 36, para. 15.

<sup>141</sup> C.f. *International Code of Conduct for Private Security Service Providers (2010)*

<sup>142</sup> UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, para. 3.2.

<sup>143</sup> CCPR/C/CHN-HKG/CO/3, para. 10; CCPR/C/CHN-MAC/CO/1, para. 16.

<sup>144</sup> A/HRC/31/66, para. 71.

<sup>145</sup> *Ibid.*, para. 67.

<sup>146</sup> *Ibid.*, para. 5; General comment No. 29, para. 5. See also CCPR/C/128/2, para. 2 (c).



from their obligations under the Covenant are strictly required by the exigencies of the situation and comply with the conditions in article 4.<sup>147</sup>

97. In a situation of armed conflict, the use of force during peaceful assemblies remains regulated by the rules governing law enforcement and the Covenant continues to apply.<sup>148</sup> Civilians in an assembly are protected from being targeted with lethal force unless and for such time as they take a direct part in hostilities, as that term is understood under international humanitarian law (IHL). In such a circumstance, they may be targeted only to the extent they are not otherwise protected under international law from attack. Any use of force under applicable IHL is subject to the rules and principles of distinction, precautions in attack, proportionality, military necessity and humanity. In all decisions on the use of force, the safety and protection of assembly participants and the broader public should be an important consideration.

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

98. The full protection of the right of peaceful assembly depends on the protection of a range of rights. Use of unnecessary or disproportionate force or other unlawful conduct by State officials during an assembly may breach articles 6, 7 and 9 of the Covenant.<sup>149</sup> An extreme case, when participants in peaceful assemblies are subjected to unlawful force or conduct as part of a widespread or systematic attack directed against any civilian population, may also constitute, where the other relevant criteria are met, a crime against humanity.<sup>150</sup>

99. Restrictions on people's ability to travel in order to participate in assemblies, including to travel abroad (art. 12 (2)) and participate in marches and other moving assemblies, may violate their freedom of movement (art. 12 (1)). Official decisions restricting the exercise of assembly rights must be open to legal challenge in a process that meets fair and public hearing requirements (art. 14 (1)).<sup>151</sup> Surveillance of those involved in assemblies and other data-gathering activities 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>152</sup> The right of peaceful assembly is more than just a manifestation of freedom of expression (art. 19 (2)), but it often has an expressive element and the rationale for the recognition of these two rights and the acceptable restrictions overlap in many ways. Freedom of access to information held by public bodies (art. 19 (2)) underlies the ability of the public to know about the legal and administrative framework applicable to assemblies and enables them to hold public officials accountable.

100. Freedom of association (art. 22) also protects collective action, and restrictions on this right often affect the right of peaceful assembly. The right of political participation (art. 25) is closely linked to the right of peaceful assembly and in relevant cases restrictions must be justified under the conditions set out in both article 21 and article 25.<sup>153</sup> The right to non-discrimination protects participants against discriminatory practices in the context of assemblies (articles 2 (1), 24 and 26).

101. At the same time, participation in peaceful assemblies may be restricted in accordance with article 21 in order to protect the rights and freedoms of others.

102. The right of peaceful assembly has an intrinsic value. It is, moreover, often exercised with the aim of advancing the implementation of other human rights, as well as other norms and principles of international law. In such cases, the duty to respect and ensure the right of

<sup>147</sup> General comment No. 29, paras. 5–9.

<sup>148</sup> General comment No. 36, para. 64.

<sup>149</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; *Benítez Gamarra v. Paraguay* (CCPR/C/104/D/1829/2008), para. 7.4.

<sup>150</sup> Rome Statute of the International Criminal Court, 1998, article 7.

<sup>151</sup> *Evrezov et al. v. Belarus*, paras. 3.3 and 8.9.

<sup>152</sup> See General comment No. 22, para. 8.

<sup>153</sup> *Sudalenko v. Belarus*, para. 8.6.

peaceful assembly derives its legal justification also from the importance of the broader range of other rights, norms and principles whose implementation it advances.

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