

Revised Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights

Rights for Peace is human rights organisation working with partners in fragile states, including South Sudan. We highly appreciate the opportunity for civil society organisations to contribute their insights to the drafting process of this General Comment based on their expertise at a time when civic spaces are shrinking in a number of countries.

Please find our comments on specific paragraphs found in the 2019 Revised Draft as follows.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are 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.

General Remarks

◇ Para 1

1. We suggest that the inclusion of [, rule of law] in paragraph 1 is unnecessary as Article 21 already explicitly specifies that the right to peaceful assembly shall only be restricted in conformity of the law. In our current context we are seeking to facilitate this right and limit undue restrictions. Inclusion of ‘the rule of law’ emphasises notions of ‘law and order’ over the importance of balancing potentially politically challenging popular expressions with national security and other listed concerns. Including the rule of law might unwittingly widen the concerns listed. Given the use of legal provisions to curtail opposition or dissenting voices, it is unnecessary to associate ‘rule of law’ which is not legally defined.
2. The Oxford Dictionary definition of ‘Rule of Law’ is: "The authority and influence of law in society, especially when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes ..."
3. In the human rights context, we are seeking to facilitate assemble peacefully, minimising the requirements for authorisations beyond what is necessary to

safeguard specific public interests, which should not be confused with the interests of authority, law and order.

◇ **Para 1 (second to last sentence)**

4. While the Draft General Comment No. 37 ('GC 37') underlines the role of peaceful assembly to 'advance ideas and aspirational goals in the public domain', 'establish the extent of support for or opposition to those ideas and goals', 'to air grievances', and create 'opportunities for inclusive participatory and peaceful resolution of differences', it could usefully acknowledge that 'right of peaceful assembly' is also an important means to of seeking the inalienable 'right to self-determination.'

◇ **Para 2 and 4: Freedom of Peaceful Assembly in public and private spaces.**

5. While Freedom of assembly is generally associated with peaceful marches, protests and other gatherings in public spaces, gatherings in private spaces also require protection.
6. The requirement in many countries for civil society or other gatherings to obtain authorisation to hold a meeting or organise a gathering in private settings should benefit from the protection of Article 21 as well as Article 22 on the right to freedom of association. In many countries it is customary for civil society organisations to obtain authorisation or clearance to organise conferences or meetings in hotels or other meetings and for these to be considered as public gatherings.

Recommendation : insert "and private" between 'public' and 'spaces' in para 2; delete the 'the' preceding 'public'. Note other references to public spaces and the privatisation of public spaces].

In para 4, delete 'publicly accessible' and use 'same place'.

◇ **Para 7**

7. In para. 7 there is discussion of contentious goals, and these are associated in same sentence with possible disruptive circumstances. This is problematic and we suggest to dissociate 'contentious goals' with any connection to possible public 'disruptions'. Gatherings regarding contentious goals need not result in disruptive assemblies, which is almost presumed with the current phrasing. If an environment is fostered that presumes contention to have a close nexus with disruption, this can heighten tensions with policing authorities that may indeed provoke disruptions where none were intended by the participants.

Recommendation : emphasise that peaceful assemblies are sometimes used to pursue ideas and 'goals that are somehow contentious', and that these need not lead to any form of disruption, and instead can be a healthy form of collective expression in a democratic society. It may even include expression of the right to

self-determination, which may be contentious, but can be peacefully expressed and as an inalienable right might open peaceful dialogue. The issue of disruption and *intended disruption* must be separated from ‘contentious goals’. The ‘scale and nature’ of some assemblies that may result in disruption could just as well be from football fans who have no contentious goals, but might, by the scale and nature of their assembly be disruptive, or might indeed have *intentions of disruption*. The ‘scale and nature’ has no logical nexus to potentially contentious ideas. We suggest that creating this nexus is unhelpful.

◇ Para 22

8. Regarding option 1 proposed in Para 22, Rights for Peace suggests to delete this option as per Option 2. States are increasingly using hate speech and incitement to violence as grounds for further repression, expulsion of journalists and removal from office of academics and public officials who express views contrary to the official line. It is not necessary to raise incitement in the section on scope when it can be more appropriately included in the section on restrictions.

◇ Para 80-84: Regarding notification and authorisation regimes

9. The provisions regarding notification and authorisation are generally helpful though we suggest a greater emphasis be placed on driving home that peaceful assembly is a ‘right’ and that any authorisation regimes are questionable. We suggest that in Para 82, in addition to General Assemblies, routine meetings, seminars and workshops that are in furtherance of the approved goals of civil society organisations should also be excluded from notification regimes. Spontaneous assemblies might benefit from being separated out from current Para 82, with more protective language associated.

◇ Final remarks

10. We have a general concern about the length of the General Comment and that raising extensive detail may create more grounds for restricting peaceful assembly. The context in countries that have experienced significant protest movements such as Sudan, so called ‘Red Card’ movement in South Sudan, Lebanon, ‘Arab Spring’ countries, Hong Kong, Chile, etc. should be present when considering the text.
11. There is at times a lack of consistency in the use of language, for instance “right of assembly” [Para 80], “freedom of assembly” [Para 112] are used.

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