



THE RIGHT TO FREEDOM OF ASSEMBLY

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE ON DRAFT
GENERAL COMMENT NO. 37

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

© Amnesty International 2020

Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence.

<https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode>

For more information please visit the permissions page on our website: www.amnesty.org

Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.

First published in 2020

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: IOR 40/1842/2020

Original language: English

amnesty.org

**AMNESTY
INTERNATIONAL**



CONTENTS

1. INTRODUCTION	5
2. OBSERVATIONS IN RELATION TO SPECIFIC PARAGRAPHS AND THEMES	6
2.1 PART 1: GENERAL REMARKS	6
2.1.1 PARAGRAPH 4: PUBLIC V PRIVATE SPACE	6
2.1.2 PARAGRAPH 6: THE FORMS TAKEN BY ASSEMBLY	6
2.1.3 PARAGRAPH 7: DISRUPTION	7
2.1.4 PARAGRAPH 8: FACILITATION OF PEACEFUL ASSEMBLIES	7
2.1.5 PARAGRAPH 9: ASSEMBLY IN THE CONTEXT OF OTHER RIGHTS	7
2.1.6 PARAGRAPH 10: RETENTION OF OTHER RIGHTS	8
2.1.7 PARAGRAPH 11: ISSUES CONCERNING THE RIGHT	8
2.2 PART 2: SCOPE OF THE RIGHT OF PEACEFUL ASSEMBLY	8
2.2.1 PARAGRAPH 12: TWO STAGE DETERMINATION	8
2.2.2 PARAGRAPH 13: PUBLIC AND PRIVATE SPACE	8
2.2.3 PARAGRAPH 13-15: EXPRESSIVE PURPOSE AND ONE PERSON ASSEMBLIES	9
2.2.4 PARAGRAPH 15: ONLINE ASSEMBLIES	9
2.2.5 PARAGRAPH 17: "PEACEFUL" AS BEING AKIN TO NON-VIOLENT	10
2.2.6 PARAGRAPHS 18-21: VIOLENT ASSEMBLIES	10
2.2.7 PARAGRAPH 21-23: THE MEANING OF PEACEFUL ASSEMBLY	11
2.3 PART 3: THE OBLIGATION OF STATES PARTIES IN RESPECT OF THE RIGHT OF PEACEFUL ASSEMBLY	12
2.3.1 PARAGRAPH 24: RESPECT AND ENSURE	12
2.3.2 PARAGRAPH 25: SIGHT AND SOUND	12
2.3.3 PARAGRAPH 26: NEGATIVE DUTY	12
2.3.4 PARAGRAPH 27: FACILITATION AND PROTECTION	12
2.3.5 PARAGRAPH 28: DISCRIMINATION	13
2.3.6 PARAGRAPHS 30-31: PUBLIC REACTION TO ASSEMBLIES AND COUNTER-ASSEMBLIES	13
2.3.7 PARAGRAPH 33: JUDICIAL OVERSIGHT	14
2.3.8 PARAGRAPH 34: HUMAN RIGHTS DEFENDERS, JOURNALISTS AND OTHER MONITORS	14
2.3.9 PARAGRAPH 35: BUSINESS AND HUMAN RIGHTS	14
2.3.10 PARAGRAPH 38: ONLINE ASSEMBLIES CONTINUED	15
2.4 PART 4: RESTRICTIONS ON THE RIGHT OF PEACEFUL ASSEMBLY	15
2.4.1 PARAGRAPH 41: INTRODUCING RESTRICTIONS	15
2.4.2 PARAGRAPH 48: NATIONAL SECURITY	15

2.4.3 PARAGRAPH 52: PROTECTION OF MORALS	15
2.4.4 PARAGRAPH 53: THE RIGHTS AND FREEDOMS OF OTHERS	16
2.4.5 PARAGRAPH 54-55: CONTENT NEUTRALITY	17
2.4.6 PARAGRAPHS 58-59: HOSTILE REACTIONS FROM THE PUBLIC	17
2.4.7 PARAGRAPH 60: FLAGS, UNIFORMS, SIGNS AND BANNERS	17
2.4.8 PARAGRAPH 62-63: RESTRICTIONS ON TIME	18
2.4.9 PARAGRAPHS 64 – 66: RESTRICTIONS ON PLACE	18
2.4.10 PARAGRAPH 67: PRIVATISED SPACE	18
2.4.11 PARAGRAPH 70: FACE COVERINGS	19
2.4.12 PARAGRAPH 71-72: COLLECTION OF DATA	19
2.4.13 PARAGRAPH 73: PUBLIC OFFICIALS	19
2.4.14 PARAGRAPH 74: COSTS	19
2.4.15 PARAGRAPH: 75: PENALTIES	19
2.4.16 PARAGRAPH 77: APPEALS AGAINST RESTRICTIONS	19
2.4.17 PARAGRAPH 79: TERRORISM	20
2.5 PART 5: NOTIFICATION AND AUTHORIZATION REGIMES	20
2.5.1 PARAGRAPHS 80-83: NOTIFICATION REGIMES	20
2.5.2 PARAGRAPH 84: AUTHORISATION REGIMES	20
2.6 PART 6: DUTIES AND POWERS OF LAW ENFORCEMENT AGENCIES	21
2.6.1 PARAGRAPH 85-86: OVERALL APPROACH TO POLICING	21
2.6.2 PARAGRAPH 91: USE OF FORCE	21
2.6.3 PARAGRAPH 92: USE OF THE MILITARY AND LLW	21
2.6.4 PARAGRAPH 93: PRE-EMPTIVE DETENTION	21
2.6.5 PARAGRAPH 94: POLICE SEARCH POWERS	22
2.6.6 PARAGRAPH 95: CONTAINMENT	22
2.6.7 PARAGRAPHS 96 – 97: DISPERSAL BY FORCE	22
2.6.8 PARAGRAPH 98: FIREARMS	23
2.6.9 PARAGRAPH 99: UNLAWFUL FORCE	23
2.6.10 PARAGRAPH 100: IDENTIFICATION OF OFFICERS	23
2.6.11 PARAGRAPH 101: INVESTIGATION OF MISCONDUCT	23
2.6.12 PARAGRAPH 103: PLAINCLOTHES OFFICERS	24
2.6.13 PARAGRAPH 104: PRIVATE SECURITY CONTRACTORS	24
2.7 PART 7: ASSEMBLY DURING STATES OF EMERGENCY AND ARMED CONFLICT	24
2.7.1 PARAGRAPH 108: DEROGATION	24
2.7.2 PARAGRAPH 109 AND 110: ARMED CONFLICT	25
2.8 PART 8: RELATIONSHIP BETWEEN ARTICLE 21 AND OTHER PROVISIONS OF THE COVENANT AND OTHER LEGAL REGIMES	25
2.8.1 PARAGRAPH 111 – 112: CO-DEPENDENT RIGHTS	25
2.8.2 PARAGRAPH 113: RIGHTS OF OTHERS	25
2.8.3 PARAGRAPH 114: IMPLEMENTATION OF OTHER HUMAN RIGHTS	26

1. INTRODUCTION

Following the Human Rights Committee's (the Committee) finalization of its first reading of the Draft General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights (ICCPR, hereafter: the Covenant), Amnesty International welcomes the opportunity to provide the following submission commenting on the Committee's revised draft text. These comments supplement Amnesty International's preliminary observations submitted prior to the general day of discussion held in March 2019.¹

The organization would like to reaffirm at the outset its strong support for this initiative. The General Comment provides a key opportunity for the Committee to clarify important principles underlying the right to freedom of peaceful assembly so as to help ensure better implementation of this right.

Rather than commenting on every issue addressed in the revised draft adopted by the Committee, the present submission aims to inform the current process by providing Amnesty International's main observations and recommendations. It follows, to the maximum extent possible, the order of the revised draft and therefore should not be seen as implying an order of prioritization of the issues commented on. In addition to the Committee's practice, which forms the primary source of interpretation of the Covenant, this document also draws on pertinent international and regional standards, rulings, decisions and observations, as well as in some cases decisions of domestic courts and other sources, with a view to providing supplemental authority for the Committee's consideration.

¹ See *Amnesty International, The Right to Peaceful Assembly: Submission to The UN Human Rights Committee Half Day of Discussion on Article 21 of the ICCPR* (Index: IOR 40/0019/2019), <https://www.amnesty.org/en/documents/ior40/0019/2019/en/>

2. OBSERVATIONS IN RELATION TO SPECIFIC PARAGRAPHS AND THEMES

2.1 PART 1: GENERAL REMARKS

Amnesty International acknowledges and supports the strong rationale provided within the draft general comment on the right to freedom of peaceful assembly under Article 21. However, we take the view that **the General Comment should refer to the right to freedom of peaceful assembly consistently throughout the text, including in the title of the General Comment.** The notion of this provision being a freedom is essential. As a rule, people are entitled to assemble whenever, wherever and however they want – and any restriction of this freedom requires a justification in full respect of the principles of legality, necessity and proportionality. In addition, they have the freedom to decide whether, or not, to participate.

Recognition that the right pertains to freedom of peaceful assembly is contained both within other human rights instruments,² regional guidelines,³ and interpretation of this right by other UN experts.⁴

2.1.1 PARAGRAPH 4: PUBLIC V PRIVATE SPACE

For our observations and further details on this issue, relevant to paragraph 4, please see section 2.4.10 below.

2.1.2 PARAGRAPH 6: THE FORMS TAKEN BY ASSEMBLY

Amnesty International recognises the balance being struck by the General Comment in providing examples of assemblies, yet also striving not to define assemblies in a restrictive or exhaustive manner. One key issue for the ‘future proofing’ of this General Comment will be how it relates to the question of online assemblies. **With this in mind, we recommend that the General Comment is at the very least drafted in a manner that is open**

² Article 20 of the Universal Declaration of Human Rights, Article 11 of the European Convention of Human Rights, Article 15 of the Convention of the Rights of the Child. The African Charter on Human and Peoples’ Rights has a similar wording (“Every individual shall have the right to assemble freely with others”).

³ OSCE Guidelines on Freedom of peaceful assembly, para.1 of the explanatory notes (p. 23): “Throughout the Guidelines, the term “right to freedom of peaceful assembly” is used in preference to that of “the right to peaceful assembly”. This emphasizes that any right to assemble is underpinned by a more fundamental freedom, the essence of which is that it should be enjoyed without interference.”

Guidelines of Freedom of Association and Assembly in Africa; para. 63.

⁴ See, for example, the reports of the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association: <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/AnnualReports.aspx>

to the possibility that in the near future assemblies in the virtual space could develop further. In order to 'futureproof' the General Comment Paragraph 6 should be amended to include text that acknowledges that assemblies may occur online.⁵

2.1.3 PARAGRAPH 7: DISRUPTION

While we agree with the principles set out at the beginning of paragraph 7, **we recommend the strengthening of the latter part of the paragraph.** In particular, the final sentence should emphasise the duty to facilitate peaceful assemblies – even if they are disruptive.

2.1.4 PARAGRAPH 8: FACILITATION OF PEACEFUL ASSEMBLIES

Amnesty International supports the inclusion in paragraph 8 of the duty on states to 'facilitate' the right to freedom of peaceful assembly, **but takes the view that this duty should be more clearly stated throughout the paragraph**, and indeed the General Comment, as a primary obligation on states. This Committee has frequently referenced the duty to 'facilitate' peaceful assemblies in its decisions⁶, as have other regional mechanisms.⁷ From this positive duty flows obligations such as to provide favourable conditions for assemblies and to provide services such as first aid, traffic redirection and sanitation. Our concern is that framing the obligation on states as to 'respect and ensure the exercise', with the duty to facilitate as a potential addition 'whenever it is needed,' muddies the waters and dilutes the state obligation.

Paragraph 8 is the first time the General Comment raises the notion of limitations. While we recognize that there is a whole section providing more clarity on the scope of permissible limitations, **it would be advisable that the three-part test required to scrutinize the lawfulness of limitations to the right to freedom of peaceful assembly is at least mentioned in this paragraph.**

2.1.5 PARAGRAPH 9: ASSEMBLY IN THE CONTEXT OF OTHER RIGHTS

Amnesty International welcomes the placement of the right to freedom of peaceful assembly within the context of a broader human rights framework – not merely in relation to its proximity and connection with other expressive rights, but also in terms of the wider array of civil and political rights, to which the right to security of person should be added (as with paragraphs 53 and 111). However, **we would recommend in line with the principles of indivisibility and interdependence, consideration is also given to the economic, social and cultural rights (ESCR) that are necessary for the right to freedom of peaceful assembly to flourish.**⁸ For example, the right to education can play a key role in enabling people to not just be aware of their rights but also how to claim them; similarly those who lack access to a range of other economic and social rights – food, health, housing, work, water and sanitation – are likely to find it more challenging and face barriers to exercising their right to freedom of peaceful assembly. This is not to fail to recognise that millions of people around the world who are socio-economically marginalised can and do participate in peaceful demonstrations, but rather to

⁵ The promotion and protection of human rights in the context of peaceful protests, Resolution adopted by the Human Rights Council on 6 July 2018 (UN Doc. A/HRC/RES/38/11) p. 2.

⁶ See, for example *Derzhavtsev v Belarus*; UN Human Rights Committee, UN Doc. CCPR/C/115/D/2076/2011 (2015) para. 8.6; *Pugach v Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/114/D/1984/2010 (2015) para 7.7; and *Evezov v Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/114/D/1988/2010 (2015) para. 7.4.

⁷ See for example: *Djavit An v Turkey* (20652/92), European Court of Human Rights Third Section, (2003) para. 57; *Oya Ataman v Turkey*, European Court of Human Rights Second Section (2006) para 36; Second report on the situation of human rights defenders in the Americas, Inter-American Commission on Human Rights (2011), OEA/Ser.LV/II.Doc. 66, para. 130.

⁸ See: Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993 (<https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>). See also: David Petrasek, The Indivisibility of Rights and the Affirmation of ESC Rights, (<http://humanrightshistory.umich.edu/files/2012/08/Petrasek.pdf>)

highlight that the denial of various ESCR can have a cumulative impact on the ability to exercise that right.⁹ As recognised by the Special Rapporteur on extreme poverty and human rights, there is often a gender dimension to the prevalence of poverty of such a severity that it inhibits the enjoyment of other civil and political rights.¹⁰

2.1.6 PARAGRAPH 10: RETENTION OF OTHER RIGHTS

We recommend that paragraph 10 makes clear that for an assembly to be considered *en masse* to be a “violent assembly” a high threshold would need to be met both in terms of the gravity and prevalence of the violent conduct such that the violence be considered both widespread and serious.

2.1.7 PARAGRAPH 11: ISSUES CONCERNING THE RIGHT

For our observations and further details on the issue of technology relevant to paragraph 11, please see section 2.2.4 below. For our observations and further details on the issue of public and private space relevant to paragraphs 11, please see section 2.4.10.

2.2 PART 2: SCOPE OF THE RIGHT OF PEACEFUL ASSEMBLY

2.2.1 PARAGRAPH 12: TWO STAGE DETERMINATION

Paragraph 12 provides a two-stage process to determine whether or not someone’s right to freedom of peaceful assembly is protected under article 21. This paragraph directly follows the heading ‘Scope of the right of peaceful assembly’. Amnesty International respectfully submits that this formulation gives an incorrect impression that unless both stages are met an assembly is out of the scope of the right. This would be wrong in law. Participation in a peaceful assembly is within the scope of the rights and is protected by article 21, notwithstanding that it may be subject to certain restrictions. Confusing a non-peaceful assembly, which is out of scope, with a peaceful assembly that is subject to restrictions, which is in scope, runs the risk of giving the wrong impression and could be abused by states to justify overly draconian responses to peaceful assemblies. **We recommend re-drafting this paragraph.**

2.2.2 PARAGRAPH 13: PUBLIC AND PRIVATE SPACE

A key issue is the nature of assemblies held on private land. Amnesty International supports the approach taken in paragraph 67, which provides assemblies can occur on publicly accessible land, and by consent on non-publicly accessible land. **In addition, we stress the importance of Indigenous peoples having the right to assemble on the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.**¹¹ **As well as being viewed from the perspective of the exercise or claim of freedom of**

⁹ See, for example, the assessment of the Special Rapporteur on extreme poverty and human rights (A/68/293), para. 27: 27.

“It is hard to think of a human right that is not potentially affected in some way by the unequal distribution and difficulty of unpaid care work. In this section, the focus is on specific economic, social and cultural rights as well as the right to participation, but this should not be interpreted as an exhaustive list. Excessive burdens of unpaid care work may threaten the enjoyment of other human rights by caregivers, such as *freedoms of speech, association and assembly*. (Emphasis added)”

¹⁰ Special Rapporteur on extreme poverty and human rights (A/68/293), para. 58.

¹¹ United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295); Article 26;

peaceful assembly, this should be seen as legitimate occupation and use of lands which form part of their right to self-determination.”

2.2.3 PARAGRAPH 13-15: EXPRESSIVE PURPOSE AND ONE PERSON ASSEMBLIES

Amnesty International welcomes the inclusion of text that provides that comparable protection to article 21 is provided by article 19 to one person protests. Although ‘assembly’ is generally understood to include more than one person, states should nonetheless refrain from unlawful restrictions on the right to one-person protest, which is a form of protest protected under Article 19 and other articles of the Covenant. This is especially important in contexts where other unlawful restrictions on the right to freedom of peaceful assembly effectively restrict all legal avenues to protest collectively.

In some countries, particularly where restrictions on the right to freedom of peaceful assembly are severe, one-person protests have become the only alternative for people to publicly express their views. In some instances, even such protests have been harshly repressed. With this in mind, and taking into account the Committee’s case law, we recommend that the General Comment leave open the possibility of protection for one person protests under article 21.¹²

2.2.4 PARAGRAPH 15: ONLINE ASSEMBLIES

Amnesty International welcomes the consideration of online assemblies contained within paragraph 15. We recognise and welcome the approach taken in the draft General Comment of wishing to defend the potential for assembly to take place online while at the same time not wishing to allow states to restrict in-person assembly on the basis that an online alternative is available. However, we caution against referring to the protection of such digital assemblies as ‘comparable human rights protections.’ While we agree that digital assemblies are protected by human rights standards, we fear the present form of words taken in the draft General Comment could be interpreted to mean that comparable protection is provided by other rights standards, and not by article 21. We take the view that in order to be ‘future proof’, **the General Comment should be clear that digital assemblies may be protected by the right to freedom of peaceful assembly itself.**

The right to freedom of peaceful assembly must be protected both in the online and offline spheres.¹³ Importantly, the UN Human Rights Council has noted that, although an assembly has generally been

¹² *Coleman v. Australia* (CCPR/C/87/D/1157/2003), para. 6.4. in which the Committee found the case at hand to be ill-founded, but did not close the door to one-person assemblies being within the scope of the right.

¹³ The Committee of Ministers of the Council of Europe have adopted a declaration supporting this assessment (Committee of Ministers, Declaration on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers, (2013)):

1. Freedom of expression and the right to receive and impart information and its corollary, freedom of the media, are indispensable for genuine democracy and democratic processes. ... The right to freedom of assembly and association is equally essential for people’s participation in the public debate and their exercise of democratic citizenship, and it must be guaranteed in full respect of Article 11 of the Convention. All Council of Europe member States have undertaken, in Article 1 of the Convention, to “secure to everyone within their jurisdiction the rights and freedoms” protected by the Convention (without any online/offline distinction).

...

5. These developments illustrate that free speech online is challenged in new ways and may fall victim to action taken by privately owned Internet platforms and online service providers. It is therefore necessary to affirm the role of these actors as facilitators of the exercise of the right to freedom of expression and the right to freedom of assembly and association.

6. Interference with content that is released into the public domain through these means or attempts to make entire websites inaccessible should be judged against international standards designed to secure the protection of freedom of expression and the right to impart and receive information, in particular the provisions of Article 10 of the Convention and the related case law of the European Court of Human Rights. Furthermore, impediments to interactions of specific interest communities should be measured against international

understood as a physical gathering of people, human rights protections for the right to freedom of peaceful assembly must be applied equally to analogous interactions taking place online.¹⁴ We are mindful of the extent to which modern association and expression are facilitated by the internet, and the importance of the internet both as a facilitator of physical assembly, and as a venue for assembly.

We are also cognisant of the fact that application of article 21 to the digital sphere directly, rather than by analogy, results in both the application of the protections and the restrictions contained within the right. However, we would stress that the application of the tests of necessity and proportionality will mitigate the risk associated with states using article 21 to restrict online assemblies. In practice it will be difficult for a state to justify restrictions on online assemblies because digital assemblies by their nature generally will take place in a manner which has a less disruptive impact on their environs.

2.2.5 PARAGRAPH 17: “PEACEFUL” AS BEING AKIN TO NON-VIOLENT

Paragraph 17 defines a peaceful assembly as the absence of actual or potential physical violence. In the context of article 21 this definition holds weight, subject to the discussions and recommendations set out at 2.2.7 below. However, we would note that such a definition would be considered reductionist in many other contexts, and to many interpretations of what is peaceful. Feminist theory, for example, might quite validly advocate for an understanding of peace that would require more than an absence of physical violence.¹⁵ Among other things, it would require a safe and inclusive space irrespective of gender. Similarly critical race theorists would question the peacefulness of a global society ridden with systemic inequalities.¹⁶ In essence, that in the absence of justice the status quo cannot be considered peaceful. **In order to avoid being seen as an attempt to be determinative of the definition of ‘peaceful’, it is recommended that the Committee is explicit that the definition contained in the General Comment pertains only to the application of article 21.**

Furthermore, we are seriously concerned with the inclusion of instances where an assembly is “deemed to be violent, because of the incitement or intention of violence, or because violence is imminent”. In other words, an assembly that is not actually violent but potentially could turn out to be violent, would be considered as being outside the scope of article 21. The exclusion from the application of article 21 based on mere “intentions,” or a potential future chain of events, opens the door to abuse by states and thus seriously risks depriving a number of lawful assemblies of the protection of article 21. This exclusion would bar any assessment based on the three-part test foreseen by this provision, and would thus risk nullifying or seriously undermining the very purpose of article 21. **We therefore recommend deleting the segment currently in brackets. We respectfully submit that measures addressing potential future violence should rather be assessed within article 21, namely by applying the three-part test foreseen by this provision.**

2.2.6 PARAGRAPHS 18-21: VIOLENT ASSEMBLIES

Amnesty International submits that it is of the utmost importance that the right to freedom of assembly is considered an individually held right, albeit one that is exercised collectively. With this in mind we welcome

standards on the right to freedom of assembly and association, in particular the provisions of Article 11 of the Convention and the related case law of the European Court of Human Rights.

¹⁴ The promotion and protection of human rights in the context of peaceful protests, Resolution adopted by the Human Rights Council on 6 July 2018 (UN Doc. A/HRC/RES/38/11) p.2.

¹⁵ See, for example, Liz Kelly, *Surviving sexual violence*, (1988); Charlotte Bunch, *Feminism, Peace, Human Rights*, Canadian Woman Studies/Les Cahiers de la Femme, Vol. 22, No. 2, p. 7, and Charlotte Bunch, *Feminism, Peace, Human Rights*, Canadian Woman Studies/ Les Cahiers de la Femme, Vol. 22, No. 2, p. 7.

¹⁶ Michael J. Perez and Phia S. Salter, *Trust, Innocence, and Individual Responsibility: Neoliberal Dreams of a Colorblind Peace*, Journal of Social Issues, Vol. 75, No. 1, 2019, pp. 267–85. at p. 271: However, a view of peace as absence of conflict as emphasized by neoliberalism, serves an oppressive function in United States society. *When the conflict or violence is subtle or even non-physical, it becomes easier to accept systemic inequalities as peaceful.* Marginalized groups are victimized by systemic and structural violence that operate outside of the boundaries of what is considered conflict. Neoliberal ideology informs this conceptualization of peace within the larger environment by undermining institutional responsibility. [Emphasis added].

the emphasis in paragraphs 18-21 on the need for authorities to address the problem of individuals perpetrating violence during an assembly in a manner which does not impede the right to assemble of those present who are not engaged in violent acts.¹⁷ **We would urge even greater clarity on this point, to make it emphatically clear that the facilitation of non-violent assembly is not optional to states, even when there are sporadic acts of violence amongst some of the assemblers.**¹⁸

Accordingly, for an assembly to be considered *en masse* to be a “violent assembly” a high threshold would need to be met both in terms of the gravity and prevalence of the violent conduct such that the violence be considered both widespread and serious.

The term ‘riot’ has a magnitude of meanings in different jurisdictions, and no definition in international law.¹⁹ As a concept it provides no additional clarity to the threshold that must be met for an assembly to be considered a “violent assembly,” and runs the risk that readers of the General Comment will apply their own preconceptions based on localised notions of what a ‘riot’ entails. **For these reasons Amnesty International recommend that the General Comment avoids using the word “riot”.**

2.2.7 PARAGRAPH 21-23: THE MEANING OF PEACEFUL ASSEMBLY

Amnesty International take the view that the ICCPR should be interpreted in a manner that maximises the protection of human rights. In light of this approach, and following in-depth consideration of the different interpretations available of article 21 and article 20, we recommend that the scope of article 21 be interpreted as broadly as possible. In interpreting article 21 all assemblies should be considered peaceful unless physical violence is both present and widespread. *Incitement* or *intention* of violence do not suffice to consider an assembly out of scope of the right, although they may lead to justifiable limitations on someone’s exercise of their right under article 21 following application of the three-part test. Incitement and intent are both open to misapplication by states, and so to allow their use to justify taking an assembly out of scope of the right would leave a dangerous potential for human rights violations. As regards article 20 of the Covenant, we consider “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” to constitute a valid rationale for limitations of the right to freedom of peaceful assembly in order to protect for instance the rights and freedoms of others, subject to the application of the three part test. Such is in keeping with the Committee’s approach to article 19.²⁰ **We do not recommend that the Committee include text that would take an assembly out of the scope of the right on the basis of the assembly’s incompatibility with article 20, but rather would suggest that while in scope, such an assembly could be subject to restrictions complying with the three part test contained in article 21.**

For these reasons, we recommend the deletion of paragraphs 21 and 22 and moving paragraph 23 to the section on restrictions. The issue of article 20 as a whole would likewise need to be addressed in the section on restrictions.

¹⁷ *Ziliberberg v. Moldova*, (61821/00) European Court of Human Rights Fourth Section (2004), (admissibility), para. 53: “An individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others.”; see also: Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 20; OSCE/ODIHR, “The Right to Freedom of Peaceful Assembly”, *Human Rights Handbook on Policing Assemblies*, p. 17.

¹⁸ *Women Victims of Sexual Torture in Atenco vs. Mexico*, Inter-American Court of Human Rights, (2018), para. 175.

¹⁹ See, for example, section 1(1) of the Public Order Act 1986 of England and Wales, with US Federal Law 18 U.S. Code § 2102. Neither require widespread violence, and the latter would require a single violent act by one person in order for an assembly to be considered a riot.

²⁰ UN Human Rights Committee General Comment No. 34 on Article 19: Freedoms of opinion and expression, para. 11.

2.3 PART 3: THE OBLIGATION OF STATES PARTIES IN RESPECT OF THE RIGHT OF PEACEFUL ASSEMBLY

2.3.1 PARAGRAPH 24: RESPECT AND ENSURE

We recommend the deletion of the final sentence of paragraph 24, which stresses that the right to peaceful assembly is not absolute. Whilst no doubt legally correct, the fact that the right is not absolute and can be subject to restrictions is adequately addressed elsewhere in the General Comment with the requisite explanation of how and when the right can be restricted. Diluting the explanation of a state's obligations with unexplained restrictions is counterproductive at this juncture.

2.3.2 PARAGRAPH 25: SIGHT AND SOUND

Amnesty International welcomes the inclusion of the 'sight and sound principle' in paragraph 25. However, we believe it would be of utility for the General Comment to explain that in the first instance it should be for assemblers to determine the location of their assembly – with relocation by the authorities to be considered a restriction and so lawful only in accordance with the three part test (legality, legitimate aim, necessity and proportionality). In the absence of such an explanation, the current formulation could be misinterpreted as permitting relocation within sight and sound of the intended audience of any assembly, at any time, at the whim of the authorities.

Furthermore, while the paragraph rightly points out that "in principle" restrictions must be content neutral, we would recommend adding a reference to article 20 as an example where content might actually be relevant when imposing restrictions to the exercise of the right under article 21.

2.3.3 PARAGRAPH 26: NEGATIVE DUTY

While we welcome that the legal tests suggested in paragraph 26 for states to impose restrictions or to sanction participants have been strengthened somewhat to "compelling justification" and "legitimate cause" respectively, we are nonetheless concerned that neither of these tests adequately summarise the applicable tests of legality, legitimate aim, necessity and proportionality. It is quite feasible that a restriction has a compelling justification without being necessary, because an alternative means of achieving the legitimate aim would be less restrictive. Similarly, there may be a "legitimate cause" for sanctions that are nonetheless out of proportion to the harm they are addressing. As a result we recommend that the tests be changed in line with the three-part test.

2.3.4 PARAGRAPH 27: FACILITATION AND PROTECTION

Amnesty International recommends the inclusion of private security providers in the list of entities that the state must protect assemblers from abuses by. We would welcome further elucidation on the state's duty to protect against abuses by private entities throughout the General Comment. Specifically, in relation to paragraph 27, we suggest the inclusion of language expanding the list of entities that might threaten assemblies to include Internet service providers, land owners and business enterprises that are the subject of peaceful assemblies. For example, we note with concern the increasing prevalence of strategic lawsuits against public participation (SLAPPs).²¹ With these in mind, paragraph 27 would benefit from text

²¹ *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66)* para. 86.

explaining that the state's duty to protect obliges protection before, after, and during the assembly.²²

2.3.5 PARAGRAPH 28: DISCRIMINATION

The inclusion in paragraph 28 of the prohibition of discriminatory application of the right to freedom of peaceful assembly is a crucial component of the General Comment. **Amnesty International has long documented discrimination on the basis of occupation, such as that faced by sex workers. We also recommend including birth, national, ethnic or social origin and economic condition. In addition, we would also recommend that the General Comment provides clearer guidance to states on two particular classes of discrimination, that faced by children and Indigenous peoples.**

Further to Article 21 of the Covenant, the Convention on the Rights of the Child (CRC) establishes the right to freedom of peaceful assembly for children on an equal basis with adults,²³ and children must enjoy the right without discrimination.²⁴ Children can face various constraints to their enjoyment of the right to freedom of peaceful assembly, such as parental consent, school regulations and restrictive legislation. States must remove legislative obstacles to children's enjoyment of the right, such as laws setting a lower age for organising or participating in peaceful assemblies,²⁵ those requiring parental consent to join associations,²⁶ and those which allow the police to remove children who assemble peacefully in groups.²⁷

While paragraph 5 of the General Comment acknowledges children's right to freedom of peaceful assembly, the General Comment does not expand further on the specific obligations of States to respect, protect and fulfil this right. **Thus, it is recommended to expand, either in paragraph 28 or in a new stand-alone paragraph, on the specific obligations deriving from the rights of children.**

Paragraph 28 should also include a clarification that meetings convened by Indigenous peoples or ethnic, religious, linguistic or other minorities are protected under article 21, and that States should pay particular attention to ensure that restrictions on the right to freedom of peaceful assembly do not disproportionately affect such communities, even if restrictions appear neutral.²⁸

2.3.6 PARAGRAPHS 30-31: PUBLIC REACTION TO ASSEMBLIES AND COUNTER-ASSEMBLIES

Amnesty International welcomes the inclusion of text requiring the protection of assemblies from violent public reactions in paragraph 31. In considering the level of obligation we note the current draft proposes either 'all measures', 'all appropriate measures' or 'all possible measures' be taken to protect the assembly participants. **We consider each of these options to be problematic, and would recommend 'all reasonable measures' as a potential alternative.** 'All measures' and 'all possible measures' would require a state to protect an assembly regardless of how much danger it faced from violent attack, and regardless of how severe the protective measure would need to be. Accordingly, while 'all appropriate measures' is a preferable test to 'all measures' or 'all possible measures', it nonetheless runs the risk of providing states with too much leeway in deciding what is and is not an appropriate measure. This could lead to insufficient action being taken to protect assemblers from the risk of violent reprisals. With this in mind, a reasonableness test would require states to exert significant effort in the protection of assemblies, while not requiring overly extreme protective measures.

²² [Ibid. para. 87.](#)

²³ Article 15 of the UN Convention on the Rights of the Child.

²⁴ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/KEN/CO/3-5 (2016), para. 27-28.

²⁵ Report to Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/26/29, para. 24; Concluding observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/FRA/CO/5 (2016), para. 34-35.

²⁶ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/15/Add.231 (2004), para. 29-30

²⁷ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/AUS/CO/4 (2012), para. 39-40.

²⁸ United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295); Article 26;

With regard to the reference to “content neutral” in paragraph 30, we would once again add a caveat related to restrictions based on article 20.

2.3.7 PARAGRAPH 33: JUDICIAL OVERSIGHT

Amnesty International welcomes the requirement of timely, independent oversight over restrictions on the right to freedom of peaceful assembly. While it is implicit in the General Comment that violations of the right can occur before, after, and during an assembly, **we would recommend the Committee take a precautionary approach and include text in paragraph 33 to make it explicit that all three must be justiciable.** Such would be in keeping with the principles elucidated in paragraph 37 of the General Comment.

2.3.8 PARAGRAPH 34: HUMAN RIGHTS DEFENDERS, JOURNALISTS AND OTHER MONITORS

We affirm the significance of the protection afforded to journalists, human rights defenders, and others who monitor assemblies. Paragraph 34 is a crucial component of the General Comment. **While we understand the second sentence, we would recommend it be clarified what is meant by “also in respect of the actions of law enforcement officials”** as this could be misinterpreted as endowing the actions of law enforcement officials with the protections discussed in the first half of that paragraph, rather than the intended aim, which we understand as being requiring that monitors be allowed to observe the actions of law enforcement officials unhindered. **We would also recommend terminology be used in place of ‘law enforcement officials’ to include all state officials or private contractors,** as in certain circumstances and geographical areas other state forces or third parties are used to respond to assemblies.]

As regards human rights defenders, we welcome that the General Comment intends to protect one of the functions that they perform – the monitoring of assemblies. However, we note that the role of Human Rights Defenders has been defined in international instruments much more broadly to also include, *inter alia*, the organisation of and participation in assemblies.²⁹ With this in mind it is problematic that the only explicit reference to Human Rights Defenders included in the General Comment is with regard to their role as monitors. **We recommend that references to the role of Human Rights Defenders be included elsewhere in the General Comment, such as at paragraphs 2 and 114.**

2.3.9 PARAGRAPH 35: BUSINESS AND HUMAN RIGHTS

Amnesty International welcomes the inclusion in paragraph 35 of text pertaining to the responsibilities of business. **We recommend that the General Comment include elaboration of what these responsibilities mean in practice. This elaboration should cover both the risk of a company itself committing abuses of the right to freedom of peaceful assembly, as well as the circumstances in which it could contribute or be directly linked to an abuse by a customer,** for example, by supplying surveillance technology to a state that monitors an assembly in a manner violating the right to privacy or while protecting private property during an assembly.³⁰ Accordingly, the responsibility on businesses is to carry out due diligence to identify, prevent and address abuses of the right of peaceful assembly and associated rights by companies within their operations (including subsidiaries) and their business partners (including suppliers and customers), wherever they may be located.³¹ **In addition, the General Comment must guard against employers unduly hindering their employees’ right to partake in peaceful assemblies.**

²⁹ See *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144)*, commonly known as the ‘Declaration on Human Rights Defenders’.

³⁰ A/HRC/31/66, paras. 85.

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

2.3.10 PARAGRAPH 38: ONLINE ASSEMBLIES CONTINUED

We repeat our analysis regarding paragraph 15 above – we consider Article 21 protects the right to freedom of peaceful assembly both online/digitally and in person. **The General Comment should reemphasise that protections granted by the Convention offline equally apply online, as recognized by the Human Rights Council.**³²

Internet shutdowns are becoming more frequent, particularly in the context of assemblies and demonstrations, including generic bans on specific sites or systems such as social media. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has expressed his particular concern about the emerging trend of the timed blocking of internet services, such as the blocking of social media platforms, preventing users from accessing or disseminating information at key political moments such as during elections, times of social unrest, or anniversaries of politically or historically significant events.³³ **While paragraph 38 of the General Comment adequately addresses wholesale internet shutdowns, it would be of utility if it also addressed targeted blocking of sites.**

2.4 PART 4: RESTRICTIONS ON THE RIGHT OF PEACEFUL ASSEMBLY

2.4.1 PARAGRAPH 41: INTRODUCING RESTRICTIONS

At paragraph 41, we consider that the framing of the recommendation that states will often have to let transgressions pass, and address them after the assembly passes, as being framed too weakly. In many instances this will be a requirement of states, in conformity with the principles of necessity and proportionality. That is to say, if the state were to react to minor transgressions during the assembly itself, it would have a chilling effect and could impede the exercise of the right by those not involved in transgressions. Indeed, in some instances the transgressions may be so minor that to react would be a disproportionate interference with the transgressors exercise of the right. **The General Comment should include text to this effect.**

2.4.2 PARAGRAPH 48: NATIONAL SECURITY

Amnesty international welcomes the inclusion of paragraph 48. National security is frequently a ground misused by states to violate the right to freedom of peaceful assembly. While reference to the necessity test does provide some degree of additional safeguard, we remain of the opinion that the threat must also be imminent and not hypothetical in order for this limitation to be justified. Accordingly, we recommend that the General Comment make this explicit.

2.4.3 PARAGRAPH 52: PROTECTION OF MORALS

Amnesty International recognises that paragraph 52 has rightly been drafted so as to provide well needed guidance to states on just how limited the scope for restricting the right in the name of protection of morals is. The emphasis on discrimination goes some way to addressing our concern that this ground for limitation be misused to violate the rights of minorities to assemble. **In order to strengthen this paragraph further, we recommend the inclusion of language that provides a non-exhaustive list of some of the protected characteristics regularly used as a basis of discrimination under this limitation. Such a list should include on the basis of sex, gender, sexual orientation, gender identity and expression, disability, occupation or health status.**

³² The promotion and protection of human rights in the context of peaceful protests, Resolution adopted by the Human Rights Council on 6 July 2018 (UN Doc. A/HRC/RES/38/11) p.2.

³³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/17/27 (2011), par. 30.

2.4.4 PARAGRAPH 53: THE RIGHTS AND FREEDOMS OF OTHERS

One of the key debates in the consideration of state responses to the right to freedom of peaceful assembly is the degree of tolerance to be exercised towards peaceful assemblies that may be disruptive. With this in mind, we are concerned that a crucial opportunity is missed in paragraph 53 to provide further guidance on the principle established in paragraph 2 - that assembly is a legitimate use of public space even when this entails significant disruption. At present the subject is broached only with regards to dispersal at paragraph 96.

As was stated in the first draft of the General Comment, peaceful assembly is a legitimate use of the public space, which is “not only an area for circulation, but also for participation”.³⁴ The right to hold assemblies and demonstrations on public roads has been upheld consistently by regional and international human rights bodies. The UN Special Rapporteur on Freedom of Peaceful Assembly and Association has stipulated that “the free flow of traffic should not automatically take precedence over freedom of peaceful assembly”.³⁵ Similarly, the Inter-American Commission has said that the urban space is not only an area for circulation, but also a space for participation.³⁶ Likewise, the IACHR Special Rapporteur for Freedom of Expression has endorsed the right to protest on roads, stating that “naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression.”³⁷

The IACHR Special Rapporteur has specifically rejected the “criminalization per se of demonstrations in public thoroughfares” when “carried out in exercise of the rights to freedom of expression and to freedom of assembly.”³⁸ Accordingly, the Inter-American Commission has concluded that the state has a duty to design operating plans and procedures to facilitate the exercise of the right of assembly, including rerouting pedestrian and vehicular traffic in a certain area.³⁹

The case law of the European Court of Human Rights also supports the notion that the potential impedance of traffic is an insufficient ground for blanket limitations on the right to freedom of peaceful assembly, and has determined that there must be some tolerance for protests to permissibly disrupt traffic.⁴⁰ In this regard, the European Court held that “any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic and, where demonstrators do not engage in acts of violence, it is

³⁴ Constitutional Court of Spain, judgment 66/1995 of 8 May 1995, legal grounds 3.

³⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, (2012), para. 41.

³⁶ Second Report on the Situation of Human Rights Defenders in the Americas (2012). Inter-American Commission on Human Rights, OEA/Ser.LV/II.Doc.66, para. 136.

³⁷ Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights , A Hemispheric Agenda for the Defense of Freedom of Expression, (2010) OEA/Ser.L. V/ II CIDH/RELE/INF. KG576 .I58 2010 OEA Ser.L/V/II CIDH/RELE/INF. 4/09.

³⁸ Annual Report of the Inter-American Commission on Human Rights 2005, (2006), para. 96.

³⁹ Inter-American Commission on Human Rights, Report on Citizen Security and Human Rights, OEA/Ser.LV/II.Doc.57, para. 193.

⁴⁰ *Balcik v. Turkey* (63878/00), European Court of Human Rights, (2005) paras. 51-52; *Ashughyan v. Armenia*, (33268/03) European Court of Human Rights, (2008)

important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly ... is not to be deprived of all substance”.⁴¹

Similarly, the European Court of Justice held that “whilst the competent national authorities must endeavour to limit as far as possible the inevitable effects upon free movement of a demonstration on the public highway, they must balance that interest with that of the demonstrators, who seek to draw the aims of their action to the attention of the public”.⁴² Hence, the Court determined, “an action of that type usually entails inconvenience for non-participants, in particular as regards free movement, but the inconvenience may in principle be tolerated provided that the objective pursued is essentially the public and lawful demonstration of an opinion”.⁴³

2.4.5 PARAGRAPH 54-55: CONTENT NEUTRALITY

Amnesty International supports the principles of content neutrality as they have been summarised in paragraphs 54-55. We note that the current wording of paragraph 54 states that the treatment of assemblies must “in principle” respect content neutrality. This, we assume, is a reference to instance such as those prohibited under Article 20 of the Covenant, which does to an extent relate to content. While Article 20 is addressed in other paragraphs of the General Comment, and so it need not be addressed in great length at paragraph 54, we submit that as an important exception to the principle of content neutrality it should be referenced here explicitly.

2.4.6 PARAGRAPHS 58-59: HOSTILE REACTIONS FROM THE PUBLIC

As with paragraph 31 above, Amnesty International advocates that all reasonable steps must be taken by a state to protect those exercising the right to freedom of peaceful assembly from a hostile/violent reaction from members of the public. We submit that paragraph 58 would be strengthened by a direct reference to the test provided in paragraph 31 for the level of protection to be provided by a state (which we suggest should be “all reasonable measures”).

We would urge increased clarity in paragraphs 58 and 59 over the use of the terms “prohibition” and “restriction.” On one reading of the General Comment prohibitions are considered a form of restriction, albeit a severe one. This view is bolstered by the heading of Part 4 of the comment. On another reading, restrictions are all measures that limit the right, up to but not including, the severity of a prohibition. In addition, as this is the first time prohibitions are discussed in Part 4 of the General Comment we would recommend emphasising that they must always be considered a measure of last resort only to be used in circumstances in which no alternative measures would suffice.

2.4.7 PARAGRAPH 60: FLAGS, UNIFORMS, SIGNS AND BANNERS

In light of our assessment that article 20 does not determine the scope of article 21 (see paragraph 2.2.7 above) we recommend the deletion of the final sentence of paragraph 60. Incitement to violence does not take a protest out of the scope of the right, but rather provides justification for restrictions in line with the three part test.

⁴¹ *Ashughyan v. Armenia*, (33268/03) European Court of Human Rights, (2008), para. 90; *Kuznetsov v. Russia* (108877/04), *European Court of Human Rights*, (2008), para. 44; *Patyi and Others v. Hungary*, *European Court of Human Rights*, (5529/05), *European Court of Human Right* (2008), para. 42.

⁴² *Eugen Schmidberger Internationale Transporte Planzuge v Austria* (European Court of Justice), 12 June 2003, para 90.

⁴³ *Eugen Schmidberger Internationale Transporte Planzuge v Austria* (European Court of Justice), 12 June 2003, paras. 90 and 91.

2.4.8 PARAGRAPH 62-63: RESTRICTIONS ON TIME

As regards paragraph 62, we recommend providing increased guidance as to the level of disruption an assembly would need to cause to others before its frequency and/or duration mean that it is proportionate to impose restrictions. Elsewhere in the general comment reference is made to “serious and sustained disruption to others” (paragraph 96) , which we submit is a useful test for the assessment of whether or not it is proportionate for an assembly to be subject to restrictions.⁴⁴

We understand the aim of paragraph 63 as in principle being to prohibit states from placing blanket curfews on when assemblies can take place, but in practice also recognising that assemblies at night, particularly in residential areas, could reach the threshold of causing significant enough disruption to the enjoyment of rights by others to warrant restrictions. We would urge increased clarity within this paragraph. In its current formulation the paragraph states that time-based restrictions ‘raise concerns’ about compatibility with the covenant – this is equivocal without sufficient clarity as to the relevant principles that would determine an assessment. **As with all other restrictions, time-based restrictions should be assessed on a case by case basis applying the requisite three-part test. We recommend this is made clear in paragraph 63.**

2.4.9 PARAGRAPHS 64 – 66: RESTRICTIONS ON PLACE

Amnesty International recommend the deletion of paragraph 64. The first sentence is covered, with greater detail and clarity, within paragraph 65. Further, the examples given are misleading in that they provide a very limited set of areas where assemblies may be permitted. This runs the risk of giving a narrow impression to the reader. Indeed, the second sentence of paragraph 64 opens the door to general prohibitions of assembly without any consideration of the relevant standards.

Paragraph 65 would be strengthened by inclusion of language on both the three-part test, and the relevance of the sight and sound principle in determining alternative locations.

We also note that paragraph 66 makes reference “to the extent that assemblies in such places are prohibited” as regards perimeters of places such as courts, parliament or other official buildings. Our concern here is that this reference to prohibition contradicts the spirit of the preceding paragraphs and indeed the preceding sentence. It appears to provide for blanket prohibitions, as appose to restrictions considered on a case by case basis in accordance with the three-part test.

2.4.10 PARAGRAPH 67: PRIVATISED SPACE

Amnesty International notes the increased privatization of space globally. Indeed, this is often space which was formerly publicly owned, and often continues to perform a public function. This could include, for example, the privatisation of the areas around national parliaments, or the selling off of public monuments or parks. **With this in mind we recommend the strengthening of paragraph 67. We consider the recognition of the right to freedom of peaceful assembly to be mandatory in such contexts.** Where privately owned spaces are open to the general public and serve a similar function as public spaces, they should be treated as a public space for the purposes of the right of peaceful assembly and it is of the utmost importance that this is made clear in the General Comment.

We also see paragraph 67 as an opportunity to reiterate that business enterprises that own, operate or provide services at that property have a responsibility to respect human rights including the right to freedom of peaceful assembly.

⁴⁴A/HRC/31/66, para. 62.

2.4.11 PARAGRAPH 70: FACE COVERINGS

Amnesty International welcomes the strong protection afforded by the General Comment to participants of peaceful assemblies to cover their faces and take other measures to obscure their identity. We agree that the threshold for the authorities to take steps to de-anonymise participants must be high. As surveillance technologies such as facial recognition and gait analysis become more readily accessible it is crucial that participants in assemblies be allowed to conceal their identities. We are concerned that the final sentence of paragraph 70 contradicts the rest of that paragraph, and undermines the protection being afforded. Blanket prohibitions on facial coverings are not in keeping with the requirement that restrictions be considered on a case-by-case basis and that de-anonymisation only occur where there is demonstrable evidence of imminent violence on the part of a participant and so probable cause for arrest.

2.4.12 PARAGRAPH 71-72: COLLECTION OF DATA

We are mindful that the collection of data in the context of policing is often conducted by private contractors. With this in mind we recommend that language be inserted into paragraph 71 so that the paragraph covers both data collected by or on behalf of authorities. By the same token, we recommend the inclusion of language at the end of the paragraph requiring states to ensure effective remedies are provided for violations or abuses of relevant rights, whether by State or non-State actors.

The widespread collection of data by authorities has a significant chilling effect and may lead to people refraining from participating in peaceful assemblies. This is part of the reason paragraph 70 is of such significance. With this in mind, and in keeping with the right to anonymous **participation, we recommend that these paragraphs address the potential chilling effect data collection entails.**

2.4.13 PARAGRAPH 73: PUBLIC OFFICIALS

Paragraph 73 appears to be opening the door to restrictions on the right of state officials to participate in peaceful assemblies without doing so with reference to one of the recognised grounds for restriction in Article 21, and without doing so with reference to the three-part test. We recommend this paragraph be amended accordingly.

2.4.14 PARAGRAPH 74: COSTS

Amnesty International is aware of ongoing cases in which assembly organisers are being required to pay the costs of traffic management/marshalling, as distinct from policing. **We recommend that the General Comment make clear that these are costs to be borne by the state.**

2.4.15 PARAGRAPH: 75: PENALTIES

The first sentence of paragraph 75 is worded in such a way as to read as though it is imposing a positive obligation on states to hold individuals accountable for their conduct where it falls short of legal requirements. We understand that the intended purpose of this sentence is actually merely to permit, rather than oblige, states to hold individuals accountable, and to restrict states from holding one person responsible for the actions of those with whom they assemble. In practice we see a range of criminal, administrative, and civil penalties being imposed on those who participate in peaceful assemblies. **As such we recommend the General Comment take a broad approach to restricting the means by which participants can be penalised, and not be limited only to criminal sanctions.**

2.4.16 PARAGRAPH 77: APPEALS AGAINST RESTRICTIONS

As noted above, (paragraph 2.4.6) the general comment should take a consistent approach to whether it includes the prohibition of an assembly to be a form of 'restriction,' or another form of limitation. **Either way, it**

would be of utility to explain within paragraph 77 that prohibitions must be justiciable within any appeal process.

2.4.17 PARAGRAPH 79: TERRORISM

There is no internationally recognised definition of ‘terrorism,’ and in many jurisdictions the concept is used in a manner that violates a multiplicity of human rights.⁴⁵ Indeed, it is a misnomer to assume that the majority of statutory terrorism offences involve an element of violence. Accordingly, it is highly problematic that the draft general comment equates terrorism offences with “other acts of violence” and instructs states to criminalise it, as many of the so-called ‘terrorist’ offences on the statute books of states have no nexus with violence.

That said, we do recognise that terrorism related offences are often defined in a vague or overly broad manner that may curtail or discourage peaceful assembly, and that this should be recognised in the General Comment. We recommend that paragraph 79 be reformulated so as to emphasise the risk to the right to freedom of peaceful assembly posed by overly broad or vague offences, without instructing states to criminalise ‘terrorism.’

2.5 PART 5: NOTIFICATION AND AUTHORIZATION REGIMES

2.5.1 PARAGRAPHS 80-83: NOTIFICATION REGIMES

Amnesty International welcomes the inclusion of language to paragraph 82 that defines the purpose of notification regimes as to facilitate the right to freedom of peaceful assembly. Taken in this light, it would be counter-intuitive for paragraph 81 not to stipulate clearly that failure to notify cannot render participation in an assembly unlawful. Otherwise the notification system designed to facilitate assembly would in effect be hindering it. Furthermore, we would recommend explicit language to establish not only that participation is not unlawful following a failure to notify, but that the assembly *itself* is not unlawful.

In addition to the current text of paragraph 82 we suggest that the general comment recommend that domestic legislation allow for spontaneous assemblies without notification.

2.5.2 PARAGRAPH 84: AUTHORISATION REGIMES

Amnesty International agrees that “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.” However, that the subsequent sentence of paragraph 84 then fails to prohibit such regimes strikes us as being at odds with this sentiment. We consider the prohibition of authorisation regimes to be absolute, and with this in mind urge the committee to adopt more categorical language in this regard. We consider that the references in paragraph 84 to notification regimes serves to muddy the waters, and that paragraphs 80-83 have already established the Committee’s position towards notification systems. Accordingly, these references should be deleted and paragraph 84 should set out a clear and absolute prohibition on authorisation regimes.

⁴⁵ See for example Amnesty International, *Dangerously Disproportionate: The ever-expanding national security state in Europe*, (<https://www.amnesty.org/download/Documents/EUR0153422017ENGLISH.PDF>)

2.6 PART 6: DUTIES AND POWERS OF LAW ENFORCEMENT AGENCIES

2.6.1 PARAGRAPH 85-86: OVERALL APPROACH TO POLICING

The overall approach, appearance and attitude of law enforcement officials should be shaped by a facilitative attitude and not be governed from the outset by the anticipation of violence and the potential need to resort to the use of force.⁴⁶ While we acknowledge the wording of paragraph 85 goes some way to establishing this, we would recommend it be made even more explicit.

2.6.2 PARAGRAPH 91: USE OF FORCE

Paragraph 91 provides the legal tests to be applied before law enforcement officials can lawfully use force. In so doing, this paragraph does contain most the ingredients of the three-part test, however it does not always do so with sufficient clarity. For example, the severity of force that may lawfully be utilised is described as no more than is “reasonably necessary under the circumstances”, which is less clear than a simple requirement that all force used be necessary and proportionate.

2.6.3 PARAGRAPH 92: USE OF THE MILITARY AND LLW

While we welcome limitations on the use the military to police assemblies, **we would urge the committee to include language in paragraph 92 to stress that, in the exceptional circumstance that members of the armed forces are used to police assemblies, they must comply with the same international human rights law and standards as law enforcement officials.** This is required by Article 1 of the UN Code of Conduct for Law Enforcement Officials⁴⁷ and reflected by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions.⁴⁸ In order to meet this requirement any military personnel deployed in the context of an assembly must be properly trained and equipped for the role they are conducting, as well as subject to appropriate policies and accountability requirements.

In relation to the need to provide law enforcement officials with less-lethal weapons, paragraph 92 could also be strengthened by clarifying that States should provide law enforcement agencies with a range of less-lethal weapons and equipment to fully comply with the principles of necessity and proportionality when resorting to the use of force.

2.6.4 PARAGRAPH 93: PRE-EMPTIVE DETENTION

Amnesty International strongly opposes administrative (security) detention. The exercise of the police powers to arrest and detain should be exercised with a view to prevent and detect crime – based on a reasonable suspicion that a person is involved in a criminal offence or of carrying an item related to the commission of a criminal offence. Suspicion should be based on evidence related to a specific person, a condition which continues to apply in the context of an assembly.

We oppose administrative (security) detention. Anyone deprived of their liberty by the state should promptly be charged with a cognizable criminal offence and tried within a reasonable period, unless action is being taken to extradite them within a reasonable period. The procedures, rules of evidence and burden and standard of proof in the criminal justice system minimize the risk of innocent individuals being deprived of

⁴⁶ OSCE/ODIHR, “Key Principles in Policing Assemblies”, *Human Rights Handbook on Policing Assemblies*, p. 24.

⁴⁷ Commentary (b) to Article 1 of the UN Code of Conduct for Law Enforcement Officials:
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

⁴⁸ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc, A/HRC/31/66, para. 66

their liberty. It is unacceptable for governments to circumvent these safeguards, and it is a serious violation of human rights for states to detain people whom they do not intend to prosecute (or extradite). The requirement that the government use the institutions and procedures of ordinary criminal justice, including the presumption of innocence, whenever it seeks to deprive a person of liberty based on allegations of essentially criminal conduct is a fundamental bulwark of the right to liberty and security of person, and an underlying principle of international human rights law.

We note that in practice administrative detention regimes have provided fertile ground for a range of serious human rights violations, including arbitrary detention. In our experience of researching and documenting human rights violations and abuses in countries around the world, creating a system of detention without trial, regardless of substitute safeguards, results in the imprisonment of individuals who in fact have not planned or perpetrated acts of violence or other serious crimes.

We urge the Committee to take a much firmer line against the use of such administrative detention in the context of assembly. For instance, we note with alarm that one interpretation of the current formulation of paragraph 93 would be that *in spite* of constituting arbitrary deprivation of liberty pre-emptive detention could nonetheless be permissible in the eyes of the Committee. **We recommend the deletion of the second sentence of the paragraph and replace it with a firm condemnation of administrative (security) detention.**

Should the Committee nevertheless still decide to proceed with having a paragraph considering possible forms of administrative (security) detention in the present General Comment, it should at the very least avoid departing in an even less rights protective way from the wording it adopted in para 15 of its General Comment 35 on the right to liberty and security of person. This Committee's General Comment 35 on the right to liberty and security of person was adopted relatively recently (2014) and unlike General Comment 37 relates directly to the right at issue.

2.6.5 PARAGRAPH 94: POLICE SEARCH POWERS

The power of stop and search/stop and frisk is frequently used as an impediment to the exercise of the right to freedom of peaceful assembly. We consider that the power should not be used in the absence of probable cause/reasonable suspicion that a crime has been, or will be, committed. We would encourage the Committee to adopt stronger language on the test to be met before exercise of this power be justified. Indeed, a mere requirement that there is evidence of a threat posed is insufficient. In addition, even where the test for a search has been met, we consider that the three-part test needs to be met, as conducting a search of an assembly participant is a restriction of their right to freedom of peaceful assembly. It is feasible that an officer might reasonably suspect a person of a minor offence (e.g littering), however in such circumstances it would still not be proportionate to restrict the right to freedom of peaceful assembly through conducting a search/frisk.

Indeed, this analysis is missing from the draft General Comment, which does not at present recommend that states should refrain from investigating and prosecuting minor offences committed during the exercise of the right to freedom of peaceful assembly.

2.6.6 PARAGRAPH 95: CONTAINMENT

Containment should not be used as a precautionary measure in case of a mere possibility of violence erupting. We recommend that paragraph 95 be amended to reflect this.

2.6.7 PARAGRAPHS 96 – 97: DISPERSAL BY FORCE

We frequently document situations in which a lawful decision to disperse an assembly is followed by a disproportionate use of police force. It should be made clearer that there is a two-step decision making process when considering dispersal of an assembly. Firstly, would it be lawful for the assembly to be dispersed, in accordance with the three-part test. Secondly, in the event that dispersal is lawful, how much force can legitimately be used in accordance with the principles of necessity and proportionality. In many instances it will only be proportionate for a verbal order of dispersal to be given, with no use of force, to be proportionate.

It should be reflected that where more than negligible injury would be caused it is unlikely that use of force will be proportionate in order to execute an arrest or dispersal against a person passively resisting.

Paragraph 97 should stress the higher necessity and proportionality threshold that is to be met before area weapons can be lawfully used. That is to say, peaceful protesters, bystanders, people living in the neighbourhood etc. should not, ideally, be exposed to any harmful substances *at all*. To accept the risk of bystander harm that is inherent in the use of area weapons, which might have serious health consequences for the individual, a particularly high threshold is required to be met, i.e. when violence is so serious and widespread that it is not possible for authorities to deal with violent individuals alone.

Paragraph 97 also provides an opportunity to remind states that area weapons should only be used following a verbal warning with time given for assemblers to disperse, and where exit routes are available to those dispersing. In any event, law enforcement agencies cannot use chemical irritants with a higher level of toxicity than what is necessary and proportionate in the specific circumstances.

2.6.8 PARAGRAPH 98: FIREARMS

Amnesty International welcomes the clear guidance given to states as to the inappropriateness of firearms as tools for policing assemblies. At present the General Comment cites a source that covers rubber coated *metal* bullets, the General Comment fails to note these are distinct from other forms of rubber or plastic bullets. This source refers only to rubber-coated metal bullets which are extremely dangerous and should not be considered a less-lethal munition. If used at all, they should indeed only be used in situations that meet the threshold for the use of a firearm.

Certain types of plastic or rubber bullets can serve as a less-lethal alternative to a firearm and can fulfil a legitimate law enforcement purpose, in stopping an individual engaged in serious violence against another person (thus, their indiscriminate firing into a crowd should also be prohibited.) In order to enable police to intervene in situations in which harm is caused to a person but that are not serious enough to meet the threshold for the use of a firearm, plastic and rubber bullets should not be subject to the same threshold as lethal force.

The General Comment should explicitly prohibit all less-lethal projectiles that are inaccurate and cannot target an individual; this includes all multiple projectile weapons as well as any other projectile that by its design (size, form, material) is too inaccurate to effectively target an individual. Furthermore, the General Comment should prohibit multiple purpose devices that unduly combine effects that in their combination cannot serve a lawful purpose (e.g. chemical irritants in combination with noise and explosive material).

2.6.9 PARAGRAPH 99: UNLAWFUL FORCE

Where unnecessary or disproportionate use of force results in a death this will violate article 9 of the covenant. This should be unequivocally expressed in the General Comment. It would also be of use if the General Comment specifically addressed the problem of sexual and gender based violence perpetrated by authorities before, during and after assemblies.

2.6.10 PARAGRAPH 100: IDENTIFICATION OF OFFICERS

We welcome paragraph 100 as it relates to the need for officer identification. We would recommend that this paragraph make clear the need for each officer to display a visible unique identifier, such as their name or an ID number unique to them.

2.6.11 PARAGRAPH 101: INVESTIGATION OF MISCONDUCT

That the General Comment requires states to investigate effectively, impartially and in a timely manner any allegation of unlawful use of force by law enforcement officials during or in connection with assemblies is welcome. We would recommend that this duty be widened to include all allegations of misconduct, as we are

concerned that certain forms of gender based or sexual violence may not otherwise be included in ‘unlawful use of force’.

In addition, the General Comment misses an opportunity to make clear to states that no formal complaint/allegation is necessary for an investigation to be opened.⁴⁹

2.6.12 PARAGRAPH 103: PLAINCLOTHES OFFICERS

We welcome the clear guidance being provided to states on the deployment of plainclothes officers at assemblies. However, we would also welcome recognition of the chilling effect that undercover officers can pose before and after assemblies. For example, the infiltration of activist groups by officers can reduce public willingness to organise or participate in peaceful assemblies. We suggest that the General Comment includes a recommendation that all undercover operations must follow strict ethical guidelines.

2.6.13 PARAGRAPH 104: PRIVATE SECURITY CONTRACTORS

Amnesty International supports the draft General Comment’s efforts to place responsibility on States for the actions of private security contractors deployed on their behalf. However, we would urge the Committee to take a stance consistent with their position in paragraph 15 of General Comment 36 on the Right to Life:

When private individuals or entities are empowered or authorized by a State party to employ force with potentially lethal consequences, the State party is under an obligation to ensure that such employment of force actually complies with article 6 and the State party remains responsible for any failure to comply

If the state has empowered or authorised any private individual or entity to use potentially lethal force, the state is responsible for that company or person’s failure to comply. Similarly, where the state has not empowered or authorised the use of such force, but is aware of and tolerates its use, the state also bears responsibility. This is wider than a state being responsible for the actions of a private security provider they hired to police an assembly. It could, for example, apply to the use of lethal force by a security provider hired by a private company to control a protest on or near their land, where the state had authorised that company to use lethal force. We would submit that the principle in paragraph 15 is equally applicable to less-lethal force.

2.7 PART 7: ASSEMBLY DURING STATES OF EMERGENCY AND ARMED CONFLICT

2.7.1 PARAGRAPH 108: DEROGATION

In its General Comment 29 on States of Emergency (Article 4) the Committee reaffirmed that “one of the conditions for the justifiability of any derogation from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”⁵⁰ **We would recommend inclusion of this requirement in paragraph 108, or at the very least a citation to General Comment 29 with an indication that there are limitations on valid derogations.**

We also recommend amending the first sentence of paragraph 108 so as to make clear that even in cases where article 21 is derogated from, it still continues to apply – subject to the restrictions as laid out by the Human Rights Committee in its General Comment 29.

⁴⁹ UN Human Rights Committee, General Comment 36 on the Right to Life, para 29 and *Kaya v Turkey* (1999) 28 EHRR 1.

⁵⁰ UN Human Rights Committee, General Comment No.29 on States of Emergency (Article 4), para. 8.

2.7.2 PARAGRAPH 109 AND 110: ARMED CONFLICT

We understand that the final sentence of paragraph 109 relates primarily to the question of assemblies during states of emergency and armed conflict. However, the sentence is drafted broadly, and could be used to justify disproportionate limitations on assemblies in circumstances in which the participants have willingly accepted some degree of risk through participation.

Amnesty International is concerned that by its current formulation paragraph 110 suggests that if during an armed conflict situation a small number of individuals are using an assembly to directly participate in hostilities, then the conduct of hostilities rules displace International Human rights Law/policing standards, and civilians in the assembly can lawfully be incidentally killed or injured (subject to IHL rules on proportionality etc). **If there is a genuine need to address this concern within the General Comment then we suggest that paragraph 109 be amended to include text that allows for individuals who are directly participating in hostilities to lose their protection from being targeted with lethal force, for the duration of such participation as the term is understood under International Humanitarian Law.**

2.8 PART 8: RELATIONSHIP BETWEEN ARTICLE 21 AND OTHER PROVISIONS OF THE COVENANT AND OTHER LEGAL REGIMES

2.8.1 PARAGRAPH 111 – 112: CO-DEPENDENT RIGHTS

As with paragraph 9 above, we recommend a holistic approach be taken to the consideration of the rights that must be respected for the right to freedom of peaceful assembly to be realised. The right to education can play a key role in enabling people to not just be aware of their rights but also how to claim them; similarly those who lack access to a range of other economic and social rights– food, health, housing, work – are likely to find it more challenging and face barriers to exercising their right to freedom of peaceful assembly.

Indeed, if states are failing any of their respect, protect and fulfil obligations under the right to non-discrimination this will likely have an effect on people's ability to assemble. By way of example, Amnesty International has documented guardianship laws prohibiting women from travelling outside their homes without permission from male family members.⁵¹

We would also note that article 7 does not require excessive force to be realised before a violation is committed. For example, threats of rape, or other sexual violence, are likely to constitute a violation of article 7 regardless of whether the threats are carried out, or whether excessive force is used by authorities.

2.8.2 PARAGRAPH 113: RIGHTS OF OTHERS

As has been clearly set out in the draft General Comment, the rights of others are to be balanced with the right to freedom of peaceful assembly. For example, in paragraph 96 of the General Comment it is stated disruption must be “serious and sustained” in order to justify dispersal. **Accordingly, paragraph 113 must make clear that the principle of proportionality dictates that it is only where disruption to the rights of others reaches such a threshold that restrictions to safeguard the rights of others will be warranted.**

We recommend removing the references to hospitals and schools, as these situations are covered in more detail in paragraph 53.

⁵¹ Amnesty International, Jordan: imprisoned women, stolen children: policing sex, marriage and pregnancy in Jordan, (<https://www.amnesty.org/en/documents/mde16/0831/2019/en/>)

If paragraph 113 is to be included in the General Comment **we recommend it is reformulated to make clear that the rights listed are to be considered in the balancing exercise, but they do not automatically override the right to freedom of peaceful assembly – a right which is worthy of due weight.** In particular in view of the generally temporal nature of assemblies, disruption is often short-term and so should be tolerated.

2.8.3 PARAGRAPH 114: IMPLEMENTATION OF OTHER HUMAN RIGHTS

Amnesty International support the inclusion of paragraph 114. **We recommend that the paragraph be further strengthened with reference to Human Rights Defenders,** as mentioned in our discussion of paragraph 34 above. The right to freedom of assembly is frequently used for the furtherance of other human rights.

**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

JOIN THE CONVERSATION



www.facebook.com/AmnestyGlobal



[@Amnesty](https://twitter.com/Amnesty)

THE RIGHT TO FREEDOM OF ASSEMBLY

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE ON DRAFT GENERAL COMMENT NO. 37

Following the Human Rights Committee's (the Committee) finalization of its first reading of the Draft General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights, Amnesty International welcomes the opportunity to provide the following submission commenting on the Committee's revised draft text. These comments supplement Amnesty International's preliminary observations submitted prior to the general day of discussion held in March 2019.

The present submission aims to inform the current process by providing Amnesty International's main observations and recommendations. In addition to the Committee's practice, which forms the primary source of interpretation of the Covenant, this document also draws on pertinent international and regional standards, rulings, decisions and observations, as well as in some cases decisions of domestic courts and other sources, with a view to providing supplemental authority for the Committee's consideration.