The below points mark the submission by DanChurchAid (DCA) to the currently ongoing process of developing a general comment (to ICCPR Article 21) on freedom of assembly by Christof Heyns. DCA is increasingly experiencing how shrinking civic space is influencing the right to freedom of assembly in many of the countries where we work, and we welcome this initiative as addressing a need to clarify the circumstances and distinctions necessary to the fulfilment of the right.

The below submission is primarily based on input from Uganda and Cambodia, but generally address challenges that are seen across many of the contexts where we operate.

1. The right to peaceful assembly differs from other means of participation and expression by its action-focused character of airing an opinion in visible public space and without need for formal association and (potentially) organising. It is thus an alternative – but important – platform to other means for expression and/or participation. Assembly holds the advantage that it can be spontaneous, simple and visible. But given the action-driven nature of RtPA it is vulnerable to suppression: whenever undemocratic regimes want to suppress political activism or freedom of expression, they restrict the space for peaceful assembly through intimidation, manipulation of legislative instruments leaving room for misinterpretation, or absolute abuse of the laws.
2. Distinguishing between various types of assembly (including commercial) would be highly useful to seek to counter governments attempts to put restrictions on assemblies through imposing of strict rules for registration, planning etc. Distinction between certain groups’ use of violence in peaceful of assembly and guidance on how to not use this as excuse to close entire demonstrations would be useful. Most importantly it should be specified clearly that use of force against peaceful assemblies should be adequate to the use of force/violence used by the assemblies.
3. When addressing the right to peaceful assembly protection of digital civic space is increasingly important to address and it is recommended that this is taken into account in the general comment and addressed as an alternative means of assembly. Digital space is now often the starting point for offline assembly. Strategies to protect and uphold digital space for communication, organisation, assembly and expression are necessary and it is crucial to understand more about how the right to freedom of assembly (and association) is expressed online and how related risks and censorship are addressed.
4. Freedom of assembly is (and should be) both an individual right and collective right. Individuals should be able to freely join groups including campaigns, peaceful protests, trade unions and any other form of assembly or association without fear of reprisal or any kind of intimidation. As a collective group, people should be able to organise themselves either for a public or private gathering without restriction except for those provided for under the internationally acceptable law. The right to peaceful assembly cannot be enjoyed if organisers are restricted to plan, publish or advertise events. Right to assembly should also cover protection against arbitrary arrest of participants on their way to or even after the event; blocking of social media to restrict mobilisation and access to information; or book-out of public spaces to prevent people room accessing such public spaces for the purpose of the events. The “chain” has to be enabling for the peaceful assembly to be possible.
5. There is a clear duty for the state to respect and protect the right to peaceful assembly by facilitating the access and enjoyment of the right. This includes, ensuring that protection in terms of security of people participating in a peaceful assembly is guaranteed. This also means that violent individuals are not allowed to disrupt events but are identified and separated from peaceful assemblies.

*DCA country offices have experienced peaceful processions turn violent due to excessive force to disperse protestors or planting of violent elements within the processions by the State. Oftentimes, Security Agencies have not protected demonstrations but watched in plain sight as militias violently descend on peaceful protestors. The state’s duty to facilitate peaceful assemblies may also entail guiding processions on routes to use during protests.*

1. The state is mandated to enact laws to regulate the enjoyment and exercise of the right to freedom of assembly. However, in the general comment a focus should be to outline that this mandate should not be interpreted by the state to “grant and refuse” the exercise of peaceful assembly. Clear, objective parameters for when an assembly should be allowed (or not) to be incorporated into national legislation would be needed in this regard. Such definitions could prevent national governments to limit exercise of the right based on objective parameters. NHRIs have an oversight role to ensure that national laws and interpretation are aligned to International Human Rights Law and specifications from the General Comment would further guide NHRIs in this work.

*DCA experience from Uganda, Cambodia and other countries has seen how laws can be used to limit the exercise of the right to peaceful assembly. An example of this would be the ‘Public Order Management Act (POMA)’ in Uganda or the ‘Law for Associations and NGOs (LANGO)’ in Cambodia.*

1. International law provides for limitations in the exercise of the right to peaceful assembly. These limitations include matters of national security, public safety, protection of public health or morals, or the respect and protection of rights and freedom of others. What constitutes ‘matters of national security’, ‘public health’ and other conditions have increasingly been misused through anti-terror legislation, NGO laws, public order management acts and similar. The general comment would thus have to relate directly to these definitions and seek to define terms that could prevent these arguments being used to limit rights.

*An important distinction between articles 19 and 21 would be that the right to peaceful assembly would often necessitate directly involvement by the state to ensure that the right is protected. This would also involve arrest of violent elements in demonstrations. However, it should be clearly spelled out that this would not entail arrests based on discrimination against certain groups as seen in with LGBTI groups in Uganda.*

1. Organisers will hold a high degree of accountability in relation to peaceful assemblies, but it should be made clear that the State and Police holds a responsibility in distinguishing between damage within and outside of the control of the organiser. When hatred or intimidation is advocated by organisers this would fall under the responsibility of these. In relation to accountability the general comment should include reflections on instances where the state infiltrates a peaceful assembly with violent criminals, causes damage to property, and turns a would-be peaceful demonstration into a violent one.

*In Uganda police operations are hugely underfunded and it is expected that the organisers of an event meet the costs of the police in providing security. Parameters for protection of demonstrations may in this regard need to be contextualized to different country realities and may be difficult to clearly define in the general comment.*

1. In organising an assembly, organisers should be required to give a notification to the Police or Authority or body with the jurisdiction. In seeking “permission” the right is relegated to the subjectivity of the authorising officer.

*In many countries, including Uganda, the laws indicate that the organisers have to notify in writing to the “authorising officer” who has the powers to give the permission or not. While Notification should be given, this should be for public assemblies and as provided for in the country’s legal framework not less than 3 days and not more than 15 days before the assembly. However, this should not apply to spontaneous assemblies and there is a great need to distinguish between these different types of assemblies.*

1. Time limitations are key in the interest of safety and personal security and these may be context specific. Limitations may also be instituted in the interest of other people operating in the area for instance diverting a procession and providing them with alternate routes or even appropriate dates, which should also be considering public interest not individual interest.

*For instance, in Uganda the law provides for public assemblies to be between 7.00 a.m. to 7.00 p.m. which justifiable in the interest of public order and personal security. In Uganda we have experienced scenarios where opposition or CSO activities including protests and marches are allowed by the police to proceed and they go on peacefully, sometimes the traffic is diverted, or the processions are given alternate routes and people peacefully assemble and go back to their daily work with no violations registered.*

1. The most important thing for the state to do is to ensure that they have put in place steps to avert/ prevent any abuse of the right to peaceful assembly. While the state has the duty to protect people against violations and abuses. In this regard the responsibility of the State extends to investigating and ensuring access to justice for those whose rights have been abused/violated based on the legal and institutional framework.
2. Private actors have a duty to respect the right to peaceful assembly, including the right of their workers or even the tenants to join associations like trade unions and providing them space to peacefully organise. A key question to be explored would be: how can businesses / private sector maintain the respect for human rights in countries where the legal systems and practices are in favour of those in power, who also have the power to affect the operations of businesses.
3. It should be clearly recognized in the general comment that enjoyment of the right to peaceful assembly is a core right to vulnerable groups to be able to express opinion and participate in society.