**Comments on the revised draft General comment No. 37, Article 21: right of peaceful assembly**

**Prepared by the Expert Council on NGO Law of the Council of Europe**

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1. **Scope of these comments**
	1. The Expert Council on NGO Law was established by the Conference of International Non-Governmental Organisations of the Council of Europe in 2008. The Expert Council contributes to ensuring an enabling environment for non-governmental organisations throughout Europe.[[1]](#footnote-1)
	2. In this submission, we make a number of suggestions, based on international human rights law, which we hope will be of use in the drafting of General comment No. 37 of the Human Rights Committee. In line with the mandate of the Expert Council, these comments are limited to aspects of the revised draft General comment which relate, implicitly or explicitly, to the right to freedom of association, including the interpretation of restrictions.
2. **The relationship between peaceful assembly and freedom of association**
	1. All human rights are interdependent and interrelated, including, as the Human Rights Committee noted in General Comment No. 25, the right of peaceful assembly and the right to freedom of association. The two rights are closely related; both are essential to the functioning of democracy, including the contribution of civil society to that functioning.[[2]](#footnote-2) Freedom of association allows people to come together to pursue common objectives, the means of which may include organising peaceful assemblies. Restrictions on the right to freedom of association (which are not in accordance with article 22) can therefore undermine the right of peaceful assembly, as is noted in paragraph 112 of draft General comment No. 37. Examples of interferences with the right to freedom of association which may undermine the right of assembly include prescribing an association’s objectives, placing onerous financial or administrative requirements on associations and requiring associations to register (as discussed in part three below).[[3]](#footnote-3)
	2. In light of the above, *we recommend that the current wording in draft General comment No. 37, which recognises the importance of protecting a number of rights alongside freedom of assembly, be expanded. We suggest that the General comment expressly recognise the importance of the right to freedom of association to the functioning of democracy, including the contribution of civil society. In particular, we suggest replacing the expression “but also rights such as freedom of association” in paragraph 9 with “and also rights such as freedom of association” to avoid any implication that freedom of association has a lower standing. In addition, we suggest that the General comment note that the full enjoyment of the right to freedom of association is a necessary part of the enabling environment for the enjoyment of the right of peaceful assembly and that freedom of association must be guaranteed in law and in practice. Adding examples of restrictions on freedom of association that can undermine the right of peaceful assembly may also help to clarify this point.*

1. **Right of associations to organise assemblies**
	1. As paragraph 4 of the draft General comment notes, the right of peaceful assembly can be exercised collectively and the right therefore has an inherently associative aspect. This associative element may manifest itself in both ad hoc gatherings as well as in more organised ways, such as through assemblies organised or supported by associations. The right to freedom of association necessarily provides those associating with the freedom to determine the basis on which they do so, including whether they register their association or not. The right therefore protects both unregistered and registered associations.[[4]](#footnote-4)
	2. The right to freedom of association also allows associations to determine their own objectives and the means and activities they use to achieve those objectives (provided they are consistent with the requirements of a democratic society). This includes the right to hold and participate in peaceful assemblies.[[5]](#footnote-5) A previous refusal to register an association does not of itself justify restricting its members from holding a peaceful assembly.[[6]](#footnote-6)
	3. *We therefore suggest that General comment No. 37 clearly states that both registered and unregistered associations can exercise the right of peaceful assembly and that the right cannot be restricted solely on the basis of a past refusal to register an association.* This is part and parcel of the obligation to promote an enabling environment for the right to peaceful assembly, noted in paragraph 27 of the draft.
2. **Restrictions on the right of peaceful assembly**
	1. Restrictions on the right of peaceful assembly must be based on an assessment of the particular circumstances, taking into account all of the facts.[[7]](#footnote-7) *The wording “in principle” in paragraph 42 of the draft General comment may detract from this requirement and we would therefore suggest deleting it.*
	2. The assessment of whether a restriction is proportionate to the aim it seeks to achieve requires a comprehensive and objective evaluation of the entire circumstances, considering whether the restriction actually achieves the aim that it purports to, and establishing that the aim cannot be achieved by means other than the particular restriction. The severity of the restriction must be taken into account along with its impact on the nature of the assembly – prohibition should always therefore be a last resort and restrictions should not undermine the nature of the event.[[8]](#footnote-8) *Consequently, we recommend that paragraph 46 of the General comment be expanded to include these requirements in the assessment of proportionality and amended to make it clear that an objective assessment is required (rather than a value judgment or value assessment).*
	3. It may also be useful for the General comment to note that general restrictions on assemblies to which exceptions apply “invert the relationship between freedom and restrictions by turning the right to freedom of peaceful assembly into a privilege.”[[9]](#footnote-9) As with all human rights in the Covenant, the right rather than the restriction should always be the starting point.
1. Further information about the Expert Council can be found at <https://www.coe.int/en/web/ingo/expert-council>. See also Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States

on the need to strengthen the protection and promotion of civil society space in Europe. [↑](#footnote-ref-1)
2. *Saidov v Tajikistan,* CCPR/C/122/D/2680/2015, 2018, para. 9.9*;* Human Rights Committee, *General Comment No.* 25, UN Doc. CCPR/C/21/Rev.1/Add.7, 1996, Paras. 8, 12; UN Human Rights Council, ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN Doc. A/HRC/20/27, 21 May 2012, para. 12; OSCE/OIDHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly,*2nd ed, 2014, para. 106; ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’, UN Doc. A/72/43280, 2017, para. 33. [↑](#footnote-ref-2)
3. Human Rights Committee, *General Comment No.* 25, UN Doc. CCPR/C/21/Rev.1/Add.7, 1996, Paras. 8, 12; UN Human Rights Council, ‘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’ UN Doc. A/HRC/31/66, 4 February 2016, paras. 7-8; OSCE/OIDHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly,*3rd ed, 2019, paras. 5-6. [↑](#footnote-ref-3)
4. UN Human Rights Council, ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN Doc. A/HRC/20/27, 21 May 2012, paras. 13, 56; OSCE/OIDHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly,*3rd ed, 2019, paras. 6, 17, <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e>; Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, principle 3; *Case of Republican Party of Russia v Russia*, App. No. 12976/07, 12 April 2011, para. 115; Expert Council on NGO Law, ‘Conditions of Establishment of Non-Governmental Organisations, 2009, para 16. [↑](#footnote-ref-4)
5. *Korneenko v Belarus,* CCPR/C/88/D/1274/2004, 2004,para. 7.2; *Kalyakin v Belarus,* CCPR/C/112/D/2153/2012, 2014,para 9.2; UN Human Rights Council, ‘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’ UN Doc. A/HRC/31/66, 4 February 2016, para. 15; UN Human Rights Council, ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN Doc. A/HRC/20/27, 21 May 2012, paras. 46, 54, 96, 97; OSCE/OIDHR and Venice Commission, *Guidelines on Freedom of Association,* 2015, principle 4 and para. 47; Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, principle 11-15; OSCE/OIDHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly,*3rd ed, 2019, para. 6. [↑](#footnote-ref-5)
6. *Stankov and the United Macedonian Organisation Ilinden v Bulgaria*, App. Nos. 29221/95 and 29225/95, 2 October 2001, para. 92 cited in OSCE/OIDHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly,*3rd ed, 2019, para. 6. [↑](#footnote-ref-6)
7. Human Rights Committee, *General Comment No 34,* UN Doc. CCPR/C/GC/34, 2011, para 35; OSCE/OIDHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly,*3rd ed, 2019, paras.131, 133. [↑](#footnote-ref-7)
8. Human Rights Committee, *General Comment No 34,* UN Doc. CCPR/C/GC/34, 2011, para 34; OSCE/OIDHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly,*3rd ed, 2019, paras.131-133; UN Human Rights Council, ‘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’ UN Doc. A/HRC/31/66, 4 February 2016, para. 30. [↑](#footnote-ref-8)
9. OSCE/OIDHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly,*3rd ed, 2019, para. 133. [↑](#footnote-ref-9)