**Written comments of Greenpeace International regarding a future
General Comment on Article 21 of the ICCPR (freedom of peaceful assembly)**

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Greenpeace International (GPI) welcomes the UN Human Rights Committee’s decision to develop a General Comment on Article 21 of the International Covenant on Civil and Political Rights (ICCPR), as well as the helpful preparatory Note prepared by the Rapporteur.

In this submission, we respond to a number of the questions raised in the Note. Furthermore, we act on the Committee’s invitation to draw attention to aspects not listed in the Note.

**Summary of submissions**

* The right should extend to peaceful assemblies that take place in private as well as in public.
* The right should also extend to assemblies taking place online, with the proviso that legislation governing ‘offline’ assemblies should not automatically be mapped onto those on the internet.
* Non-violent disruption, whether caused incidentally or deliberately, should not remove a gathering from the scope of ‘peaceful assembly’.
* The requirement for States to show tolerance towards peaceful assemblies should also apply in full during the pre-trial process, including when deciding whether to bring charges, what charges to bring, and whether to seek and impose pre-trial detention.
* Tolerance should also be shown to assemblies that cause disruption to a corporation or other private party. The appropriate degree of tolerance should depend on factors such as whether the assembly concerns an issue of public interest, whether it targets a public figure (including major corporations) and the degree of disruption caused.
* Organisers of and participants in assemblies should be protected against Strategic Lawsuits Against Public Participation(SLAPP suits) through the enactment of legislation that allows an early dismissal (with an award of costs) of such suits and penalises abuse.
* Blanket bans on assemblies in certain locations should be avoided in favour of a case-by-case assessment, wherever feasible.
* Freedom to choose the manner of an assembly is an important aspect of the right, and limitations on this freedom should meet the test of justification set out by Article 21 ICCPR in full.
* Preventing the non-disruptive recording of law enforcement officials during assemblies should be considered an unjustifiable interference with freedom of peaceful assembly and freedom of expression.
* States should clearly distinguish between participation in an assembly that is deemed unlawful, and presence for the purposes of observing and recording (whether the person is a professional reporter or not). Such a distinction where possible be made on the spot, or else promptly in the pre-trial stage of any further proceedings.

 **Question 1: the scope of ‘peaceful assembly’**

The Rapporteur’s first set of questions is concerned with which activities come under the right to assemble.

*Only in public places or also private ones?*

Existing international standards seem to differ on whether an assembly is necessarily a gathering in a public place, or may also take place in private. The *OSCE-ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly* (hereinafter the OSCE Guidelines) diverge from the otherwise similar definitions embraced by UN special mechanisms and the African system, by stating that an assembly is “the intentional and temporary presence of a number of individuals in a public place …” (emphasis added).[[1]](#footnote-1)

But despite first impressions, the drafters do not seem to have meant to exclude gatherings in private places. The same paragraph goes on to say that “all types of peaceful assembly – both static and moving assemblies, as well as those that take place on publicly or privately owned premises or in enclosed structures – deserve protection” (emphasis added).[[2]](#footnote-2) This position appears correct to us. The rationales underlying the right, such as protecting the airing of views against unreasonable interference by public authorities, apply with equal force whether an assembly takes place on privately or publicly owned property. We also note that the European Court of Human Rights (ECtHR) has found interferences with the right to assemble in cases involving enforcement on private premises, such as a police raid on a gathering in a café to celebrate Che Guevara’s birthday.[[3]](#footnote-3)

*Online assemblies*

As regards the digital sphere, there can be little doubt that measures taken online in order to frustrate assemblies offline, such as blocking organisers’ accounts, jamming cell phone signals or even shutting the internet down[[4]](#footnote-4) represent a limitation on freedom of assembly. These are analogous to the physical roadblocks, flight bans and similar measures that have been found to constitute interferences with the right.[[5]](#footnote-5)

That freedom of assembly also protects gatherings that themselves take place online, for example in a chat room, is a compelling proposition. Here too, the rationales for protection of assemblies apply whether persons gather in the flesh or online. At the same time, it is important for the Committee to couple such recognition with a warning that regulation that is appropriate offline may not be justifiable online. The Committee has for example held that “a requirement to notify the police of an intended demonstration in a public place six hours before its commencement may be compatible with the permitted limitations laid down in article 21 of the Covenant.”[[6]](#footnote-6) In our view, a notice requirement would not be justifiable for an online assembly, given the absence of any need to reroute traffic or deploy police.

*Peacefulness and disruptive protest*

The Rapporteur raises the question whether disruption may be enough to deprive an assembly of its peaceful character.

By its ordinary meaning, ‘peaceful’ implies an absence of violence, not of disruption. As ECtHR has repeatedly stressed,

“Any demonstration in a public place may cause a certain level of disruption to ordinary life … This fact in itself does not justify an interference with the right to freedom of assembly, as it is important for the public authorities to show a certain degree of tolerance.”[[7]](#footnote-7)

Beyond the incidental disturbance assemblies may cause, the ECtHR has also held that deliberate hindrance of activities of which demonstrators disapprove, such as disrupting a hunt by walking in the line of fire, does not deprive a protest of its peaceful nature.[[8]](#footnote-8) In *Kudrevičius and Others v. Lithuania*, the Grand Chamber did express some reservations about the deliberate obstruction of the activities of ‘innocent’ third parties – in this particular case, by blocking three motorways for two days – but ultimately found that the conduct was not “of such a nature and degree as to remove … the demonstration from the scope of protection of the right to freedom of peaceful assembly.”[[9]](#footnote-9)

The Inter-American Commission on Human Rights (IACHR) takes a similar view:

“Strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests may naturally cause annoyances or even damages … 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.”[[10]](#footnote-10)

We consider this view correct. Assemblies are typically intended to call attention to issues or grievances that participants feel are being ignored. A certain degree of discomfort for the target is part and parcel of that process. The relevant question (which we address further below) is not whether the right continues to apply, but whether the disruption reaches a level where a restriction may be imposed, and importantly, whether that restriction respects the relevant conditions set out in Article 21 ICCPR, such as lawfulness and proportionality.

**Question 4: the duty to ‘respect and ensure’ and the required level of tolerance**

Under Question 4, Rapporteur enquires whether States “are required to show a certain level of tolerance to conduct when engaged in as part of peaceful assembly, and not meet it with the same force of the law as it would otherwise do.”

The existence of such a duty is well recognised in existing international standards and regional jurisprudence (some of which were quoted above). Tolerance has been held to imply, among others, that assemblies should not be dispersed merely because formalities such as a notification requirement were not complied with;[[11]](#footnote-11) that where dispersal is in principle justified, public authorities should nevertheless act with patience and ordinarily allow demonstrators an opportunity to make their point;[[12]](#footnote-12) and that sanctions should be proportionate, with criminal sanctions and in particular imprisonment discouraged where a peaceful assembly is concerned.[[13]](#footnote-13)

We would like to draw the Committee’s attention to two important additional aspects of tolerance that, in our view, have not received sufficient attention in existing standards and deserve discussion in the General Comment.

*Tolerance in the pre-trial process*

An acquittal or modest sanction may create a misleading façade of tolerance, if it follows aggressive steps in the pre-trial process, which can have a considerable chilling effect. There is a practice in many jurisdictions of bringing heavy charges such as terrorism or rebellion in response to assemblies and holding the suspects in prolonged pre-trial detention. An overview of such practices in the Americas is presented in the IACHR’s 2015 Report on the Criminalization of the Work of Human Rights Defenders.[[14]](#footnote-14) GPI has also been confronted with disproportionate prosecutions, most notably in 2013, when the entire crew of the Greenpeace vessel *Arctic Sunrise* was held on charges of piracy after a peaceful protest against oil production in the Arctic.[[15]](#footnote-15) While the charges were eventually lifted,[[16]](#footnote-16) two months in pre-trial detention and the threat of a much longer sentence unsurprisingly had a major impact on those involved.

It would therefore be very useful if the General Comment clarified that the duty of tolerance applies with full force during the pre-trial process,in particularto decisions whether to bring charges, what charges to bring, and whether to seek and impose pre-trial detention on organisers of or participants in an assembly.

Support for each of these elements can be found in the ECtHR’s jurisprudence. In *Pekaslan and Others v. Turkey*, the Court held that “prosecution of the applicants for their participation in a peaceful demonstration, was disproportionate and not necessary for preventing disorder”[[17]](#footnote-17) and found a violation of Article 11 ECHR – notwithstanding the fact that the applicants had been acquitted of the charge by the domestic court. In a recent decision, *Mătăsaru v. the Republic of Moldova,* the Court considered that “the domestic courts failed to explain in a satisfactory manner why they opted for the criminal sanction … and not for that provided for by … the Code of Administrative Offences,” in response to an assembly involving sculptures deemed obscene.[[18]](#footnote-18) And in *Taranenko v. Russia*, in which the applicant had been remanded in custody for a year and handed a suspended three-year sentence after joining a direct action inside the President’s Administration building, the Court considered the “lengthy period of detention pending trial … not proportionate to the legitimate aim pursued.”[[19]](#footnote-19)

*Tolerance in relation to assemblies that inconvenience private parties*

It is GPI’s observation that many jurisdictions display low or zero tolerance towards assemblies that cause disruption to a corporation or other private party. Such protests are often promptly dispersed, and courts seem to set a low threshold for the issuance of injunctions or compensation orders.

The notion that private actors may need to absorb a certain degree of loss as a result of the airing of grievances against them is well-established in other areas. A corporation or public figure who suffers loss of income as a result of a critical publication has no recourse against the author or publisher if the allegations were sufficiently justified. Workers have the right, if certain conditions are met, to strike for better conditions, notwithstanding the resulting loss to their employer. In some jurisdictions trade unions – which could be compared to the organiser of an assembly – enjoy a degree of protection from damage claims.[[20]](#footnote-20) There is no cogent reason why losses occurring as a result of a peaceful assembly – organised, for example, neighbours of a factory rather than its employees – should be treated any differently.

Undoubtedly, the degree of tolerance required is not unlimited. The ECtHR has repeatedly held that “[t]he appropriate ‘degree of tolerance’ cannot be defined *in abstracto*” but depends on “the particular circumstances of the case and particularly at the extent of the ‘disruption to ordinary life’.”[[21]](#footnote-21) This would seem to be sensible guidance for all assemblies, whether directed at a private or public target.

The circumstances that are relevant are, in our view, much the same as those apply when balancing freedom of expression against the rights of others, such as the right to private life or reputation. In General Comment No. 34, the Committee indicated that a greater degree of protection is required for speech where there is “a public interest in the subject matter of the criticism”,[[22]](#footnote-22) or where it relates to public figures.[[23]](#footnote-23) By analogy, a greater degree of tolerance should be shown where any assembly addressed to a private party relates to a matter of public interest or where the target is a public figure – a term that, under ECtHR jurisprudence, includes major companies and the persons responsible for them.[[24]](#footnote-24)

Courts in the Netherlands – where GPI is headquartered – have developed an approach to disruptive assembly that may be seen as an example of good practice in this regard.[[25]](#footnote-25) Peaceful assemblies that cause deliberate hindrance to private parties are deemed lawful (and damages non-recoverable) if the organisers have complied with requirements of subsidiary and proportionality.[[26]](#footnote-26) ‘Subsidiarity’ means that less far-reaching means to convey the grievance have been attempted unsuccessfully.[[27]](#footnote-27) ‘Proportionality’ means that the damage caused does not exceed what is necessary to achieve the intended objective. [[28]](#footnote-28) Whether the target is a major corporation has been deemed relevant to the proportionality assessment.[[29]](#footnote-29)

**Question 5: the duty to protect those engaged in peaceful assembly**

The fifth question posed in the Note raises many important issues, but in this submission we limit ourselves to the importance of protecting assembly participants and organisers from civil actions that lack merit.

*The duty to protect against Strategic Lawsuits Against Public Participation (SLAPPs)*

In recent years there has been a discernible growth in SLAPPs – civil lawsuits, typically brought by corporations or rich individuals, which are designed to shut down assemblies or other critical expression by intimidating, harassing and draining the resources of those targeted. A good example of such a SLAPP is a US $900 million claim brought under an anti-mafia statute by Energy Transfer Partners (ETP) in 2017 against a number of defendants, including GPI.[[30]](#footnote-30) The suit, which was recently dismissed in its entirety, alleged that the Indigenous-led protests against an ETP pipeline project were in reality manufactured by the defendants in order to raise funds.[[31]](#footnote-31)

In his previous capacity as UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Christof Heyns highlighted the threat such SLAPPs pose to freedom of assembly. A report issued jointly with Maina Kiai, the then Special Rapporteur on the rights to freedom of peaceful assembly and of association (FOAA), states:

“Business entities commonly seek injunctions and other civil remedies against assembly organizers and participants on the basis, for example, of anti-harassment, trespass or defamation laws, sometimes referred to as strategic lawsuits against public participation. States have an obligation to ensure due process and to protect people from civil actions that lack merit”[[32]](#footnote-32) (emphasis added).

It would be helpful if the General Comment were to provide guidance to States on the content of the obligation to protect people from SLAPPs. In this regard, the Committee may wish to draw on the Information Note on SLAPPs and FOAA Rights published by Mr Kiai’s successor in the FOAA Special Rapporteurship, Ms. Annalisa Ciampi. The Note recommends that:

“States should protect and facilitate the rights to freedom of expression, assembly and association to ensure that these rights are enjoyed by everyone by, *inter alia*, enacting anti-SLAPPs legislation, allowing an early dismissal (with an award of costs) of such suits and the use of measures to penalize abuse.”[[33]](#footnote-33) (emphasis added)

The possibility of early dismissal is an important safeguard, as poorly resourced defendants will often be forced to settle, faced with the prospect of lengthy litigation. Penalties for abusive plaintiffs are necessary to ensure a real deterrent beyond the cost of litigation itself, which will often be insignificant for a major corporation.

**Question 9: time, place and manner restrictions**

*Limitations on the manner of assemblies*

Freedom to choose the manner of an assembly is an important aspect of the right, as its form is often an integral part of its message, particularly in the case of symbolic protest. A relevant precedent is the ECtHR case *Women on Waves and Others v. Portugal*, where the Court rejected the Government’s argument that the applicant NGO could just as well carry out its advocacy for reproductive rights on land as on its vessel, which had been denied entry to territorial waters:

[D]ans certaines situations le mode de diffusion des informations et idées que l’on entend communiquer revêt une importance telle que des restrictions … peuvent affecter de manière essentielle la substance des idées et informations en cause. Tel est notamment le cas lorsque les intéressés entendent mener des activités symboliques de contestation à une législation qu’ils considèrent injuste.[[34]](#footnote-34)

It would be very welcome if the General Comment would underline that any ban on a particular form of assembly must meet the three-part test for restrictions under Article 21 ICCPR, the availability of alternatives notwithstanding.

*Bans on assemblies in particular places*

GPI is frequently confronted with attempts to frustrate peaceful assembly by creating ‘safety zones’ around controversial infrastructure. This is true in particular of offshore oil rigs. Article 60 of the UN Convention on the Law of the Sea permits the creation of a safety zone of up to 500 metres around a rig. States routinely impose (or even exceed) this maximum extent and proceed to enforce the zone inflexibly, without regard to the right to assemble “within sight and sound” of the target[[35]](#footnote-35) and without reference to any genuine safety concern.

We would accordingly welcome a statement in the General Comment along the lines of the OSCE Guidelines, which state:

“Consequently, the blanket application of legal restrictions – for example, banning all demonstrations … in particular locations or public places that are suitable for holding assemblies – tends to be over-inclusive. Thus, they will fail the proportionality test, because no consideration has been given to the specific circumstances in each case.”[[36]](#footnote-36)

In addition, the Committee may wish to take note of the ECtHR’s rejection, in *Lashmankin and Others v. Russia,* of a law that prohibited the holding of public events in the vicinity of certain locations, including courts, railway lines and pipelines. The Court deemed this provision disproportionate and held that such a general location-based ban “can only be justified if there is a real danger of [assemblies] resulting in disorder which cannot be prevented by other less stringent measures.”[[37]](#footnote-37)

**Question 12: the rights of those who wish to observe and record assemblies**

The right to observe and record assemblies, raised in question 12, is an issue of high importance. Assemblies that go unreported are incapable of informing public opinion beyond the immediate surrounds. Moreover, recording introduces an important element of accountability both for participants and law enforcers.

*The right of participants to record*

There are frequent reports from around the world about police attempting to prevent participants in assemblies from recording their actions, by seizing the relevant equipment, ordering it to be turned off or arresting those responsible.[[38]](#footnote-38) This practice will often be contrary to domestic law, and to our mind is an unjustifiable interference in the rights guaranteed by Articles 19 and 21 ICCPR, provided there is no active hindrance of law enforcers’ work.

*The right of journalists to observe and record*

Another problematic practice is the equating of journalists and monitors with participants, charging them with the same offences (such as trespass or refusal to obey a dispersal order) based on their presence at the scene. An example of this occurred in connection with the above-mentioned seizure of the Greenpeace vessel *Arctic Sunrise*. The two freelance journalists on board faced the same charges of piracy as the activists whose protest they came to document.[[39]](#footnote-39)

The Grand Chamber of the ECtHR issued a much-criticised precedent on the rights of journalists at assemblies in *Pentikäinen v. Finland*.[[40]](#footnote-40) While it recognised that the presence of journalists “is a guarantee that the authorities can be held to account for their conduct *vis-à-vis* the demonstrators.”[[41]](#footnote-41) and that the media have a “professional duty to obtain and disseminate information,” [[42]](#footnote-42) it agreed with the Government that journalists are not entitled to “preferential or different treatment in comparison to the other people … at the scene.”[[43]](#footnote-43) It is therefore up to a journalist to “make a choice between the two duties and … to be aware that he or she runs the risk of being subject to legal sanctions … by not obeying the lawful orders of, *inter alia*, the police.”[[44]](#footnote-44)

If journalists must engage in civil disobedience to effectively cover assemblies that the authorities consider unlawful, there is a very real risk that none will choose to be present, thus removing this element of accountability precisely at the moment it becomes most important. The ECtHR appears to be moderating its position, holding in the more recent ruling in *Butkevich v. Russia* that where a person detained at an assembly claims to have been there as a journalist, it becomes ”pertinent for the authorities at the pre-trial stage of the proceedings and, *a fortiori*, during the examination of the case … to delve into whether his alleged actions were excusable or otherwise mitigated.”[[45]](#footnote-45)

A statement from the Committee to similar effect would be of value to journalists covering assemblies worldwide, and by extension, to the participants in those assemblies.

*The position of other persons observing or recording assemblies*

Recognition of a separate status for journalists raises the question to whom this protection should extend, and how law enforcement authorities should distinguish in practice between observers and participants (who may themselves be recording).

In our view, persons who are present solely to document should not fear being treated as participants – be they professional reporters, volunteer monitors or citizen journalists. As the Committee stated in General Comment No. 34, journalism is nowadays “a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others”.[[46]](#footnote-46)

It would be unrealistic to expect law enforcement agents to engage in any significant verification of a person’s status in chaotic and fast-moving situations. At the same time, it is reasonable to expect a basic distinction being made between persons who, by reason of their clothing, press card or positioning and behaviour, are readily recognisable as observers, and others who are not. Moreover, as the ECtHR notes, it becomes particularly pertinent in the pre-trial stage for prosecutorial authorities properly to assess any claim that a person was not a participant but a monitor, and to assess whether charges are justified in this light.[[47]](#footnote-47)

1. OSCE Guidelines, para. 1.2. [↑](#footnote-ref-1)
2. *Ibid.* [↑](#footnote-ref-2)
3. *Emin Huseynov v. Azerbaijan,* ECtHR, Judgment of 7 May 2015. [↑](#footnote-ref-3)
4. According to one count, there were 188 internet shutdowns around the world in 2018, with protest identified as the most common cause. See the Shutdown Tracker Optimization Project by Access Now at https://www.accessnow.org/keepiton/. The UN Special Rapporteur on Freedom of Opinion and Expression has adopted a Joint Declaration together with regional special mandates in the area of freedom of expression stating that “using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.” See *Joint Declaration on Freedom of Expression and responses to conflict situations*, 4 May 2015, available online at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15921&LangID=E>. [↑](#footnote-ref-4)
5. See, for example, *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, ECtHR, Judgment of 5 July 2016 (the applicants were stopped on a highway on their way to a demonstration and held there for several hours) and *Kasparov v. Russia*, ECtHR, Judgment of 11 October 2016 (the applicant’s flight ticket was seized for “forensic examination”, preventing him from reaching an opposition rally). [↑](#footnote-ref-5)
6. *Kivenmaa v. Finland*, HRC, Views of 9 June 1994, UN Doc. CCPR/C/50/D/412/1990, para. 9.2. [↑](#footnote-ref-6)
7. See *Kudrevičius and Others v. Lithuania,* ECtHR, Grand Chamber Judgment of 15 October 2015, para. 155, and the cases referenced therein. [↑](#footnote-ref-7)
8. See *Steel and Others v. the United Kingdom,* Judgment of 23 September 1998*,* para. 92; *Taranenko v. Russia,* Judgment of 15 May 2014, paras. 70-71. [↑](#footnote-ref-8)
9. *Kudrevičius and Others v. Lithuania, supra* note 6, paras. 97-98. [↑](#footnote-ref-9)
10. IACHR, *Report on the Criminalization of the Work of Human Rights Defenders,* OEA/Ser.L/V/II, Doc.49/15, 31 December 2015, paras. 126-127. [↑](#footnote-ref-10)
11. See UN Human Rights Council, *Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. A/HRC/23/39, 24 April 2013, para. 29 (“Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically … and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment”); *Kudrevičius and Others v. Lithuania, supra* note 6, para. 150 (“An unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an interference with a person’s right to freedom of assembly”). [↑](#footnote-ref-11)
12. See, for example, *Oya Ataman v. Turkey*, ECtHR, Judgment of 5 December 2006, paras. 41-42 (“The Court … is particularly struck by the authorities’ impatience in seeking to end the demonstration … where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance”.) [↑](#footnote-ref-12)
13. *Kudrevičius and Others v. Lithuania, supra* note 6, para. 146 (“The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference … A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty”). [↑](#footnote-ref-13)
14. IACHR, *Report on the Criminalization of the Work of Human Rights Defenders,* OEA/Ser.L/V/II, Doc.49/15, 31 December 2015. See in particular paras. 45-46, discussing excessive charges against people participating in protests. [↑](#footnote-ref-14)
15. For an overview of the case, see the timeline at <http://tinyurl.com/y272jmr2>. [↑](#footnote-ref-15)
16. The charges were lifted under the terms of an amnesty law adopted by the State Duma on 18 December 2013. An international arbitral tribunal constituted under Annex VII to the UN Convention on the Law of the Sea subsequently ruled that the actions taken against the crew, including prosecution, had violated various provisions of the Convention. See <https://pca-cpa.org/en/cases/21/>. [↑](#footnote-ref-16)
17. *Pekaslan and Others v. Turkey*, ECtHR, Judgment of 20 March 2012, para. 82. [↑](#footnote-ref-17)
18. *Mătăsaru v. the Republic of Moldova,* ECtHR, Judgment of 15 January 2019, para. 32. [↑](#footnote-ref-18)
19. *Taranenko v. Russia*, ECtHR, Judgment of 15 May 2014, para. 95. [↑](#footnote-ref-19)
20. See, for example, s. 219 of the UK‘s Trade Union and Labour Relations (Consolidation Act) 1992 and s. 67 of South Africa’s Amended Labour Relations Act (No. 66 of 1995). [↑](#footnote-ref-20)
21. See *Kudrevičius and Others v. Lithuania, supra* note 6, para. 155, and references therein. [↑](#footnote-ref-21)
22. HRC, *General Comment 34: Article 19 (Freedoms of expression and opinion)*, UN Doc. CCPR/C/GC/34 (2011), para. 47. [↑](#footnote-ref-22)
23. *Id.,* para. 38. [↑](#footnote-ref-23)
24. See, for example, *Steel and Morris v. United Kingdom*, ECtHR, 15 February 2005,para. 94. [↑](#footnote-ref-24)
25. This line of jurisprudence was established in *Shell Nederland Verkoopmaatschappij B.V. v. Stichting Greenpeace Nederland and Stichting Greenpeace Council*, Amsterdam District Court, Judgment in Summary Proceedings of 5 October 2012, ECLI:NL:RBAMS:2012:BX9310. An unofficial English translation is available at <http://tinyurl.com/bgmq7xp>. [↑](#footnote-ref-25)
26. *Id.,* para. 5.7. [↑](#footnote-ref-26)
27. *Id.*, para. 5.8. [↑](#footnote-ref-27)
28. *Id.*, para. 5.9. [↑](#footnote-ref-28)
29. *See* The Hague District Court, Judgment of 23 August 2013, ECLI:NL:RBDHA:2013:10766, para. 4.4 (“Furthermore it is relevant that ‘tall trees catch much wind’, and a large organisation such as Shell, whose actions may have considerable social impact, must more readily count on being confronted with protest actions that infringe on its rights” (unofficial translation).) [↑](#footnote-ref-29)
30. Energy Transfer Equity L.P and Energy Transfer Partners L.P v Greenpeace International et al., Case 1:17-cv00173-CSM (D.N.D. 22 Aug. 2017). [↑](#footnote-ref-30)
31. The complaint and other documents from the case can be accessed at <https://earthrights.org/case/energy-transfer-partners-v-greenpeace-banktrack-et-al/>. [↑](#footnote-ref-31)
32. *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. 84. [↑](#footnote-ref-32)
33. Info Note on SLAPPs and FOAA Rights, 2017, available online at <https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx>. [↑](#footnote-ref-33)
34. *Women on Waves and Others v. Portugal*, ECtHR, Judgment of 3 February 2009, para. 39. The quote could be translated into English as: “In certain situations the mode of dissemination of the information and ideas to be communicated is of importance such that restrictions … may substantially affect the substance of the ideas and information in question. This is particularly the case where the persons concerned intend to carry out symbolic activities in protest against legislation which they regard as unjust.” [↑](#footnote-ref-34)
35. The right to assembly “within sight and sound” of the target is recognised, among others, in *Denis Turchenyak et al. v. Belarus*, HRC, Views of 10 September 2013, UN Doc. CCPR/C/108/D/1948/2010, para. 7.4*;* *Pavel Kozlov et al. v. Belarus*, Human Rights Committee, Views of 7 May 2015, UN Doc. CCPR/C/113/D/1949/2010, para. 7.4*; Leonid Sudalenko v. Belarus*, Human Rights Committee, Views of 28 December 2015, UN Doc. CCPR/C/115/D/2016/2010, para. 8.4; *Lashmankin and Others v. Russia*, ECtHR, Judgment of 7 February 2017, paras. 405 – 409. [↑](#footnote-ref-35)
36. OSCE Guidelines, Explanatory Notes, paras. 43 and 102; see also African Commission on Human and Peoples’ Rights, *Report of the Study Group on Freedom of Association and Assembly in Africa*, 2014, p. 20, para. 25. [↑](#footnote-ref-36)
37. *Lashmankin and Others v. Russia*, ECtHR, Judgment of 7 February 2017, para 434. [↑](#footnote-ref-37)
38. See, for example, *Citizens filming police often find themselves arrested,* Albuquerque Journal, 30 August 2015, available online at <https://tinyurl.com/y29why9b>; *"Fais voir ton téléphone ou je t'allume" : peut-on filmer la police ?*, l’OBS, 8 February 2017, available online at <https://tinyurl.com/yxdk48aq>; *Gericht: Grazer Polizei handelte "rechtswidrig"*: *Löschen von Filmen auf Kamera eines Demonstranten ist laut Gericht "gröblicher Eingriff”*, Der Standard, 1 August 2014, available online at <http://tinyurl.com/y55y7npf>. [↑](#footnote-ref-38)
39. See *Second journalist charged by Russia over Greenpeace Arctic oil rig protest*, The Telegraph, 3 October 2013, available online at <https://tinyurl.com/y55wkzxy>. [↑](#footnote-ref-39)
40. *Pentikäinen v. Finland,* ECtHR, Grand Chamber Judgment of 20 October 2015. [↑](#footnote-ref-40)
41. *Id.*, para. 89. [↑](#footnote-ref-41)
42. *Id.*, para. 110. [↑](#footnote-ref-42)
43. *Id.*, para. 109. [↑](#footnote-ref-43)
44. *Id.*, para. 110. [↑](#footnote-ref-44)
45. *Butkevich v. Russia*, ECtHR, Judgment of 13 February 2018, para. 133. [↑](#footnote-ref-45)
46. HRC, *General Comment 34: Article 19 (Freedoms of expression and opinion)*, UN Doc. CCPR/C/GC/34 (2011), para. 44. [↑](#footnote-ref-46)
47. *Supra* note 43. [↑](#footnote-ref-47)