General Comment on Article 21, ICCPR

Submission to the Human Rights Committee ahead of a new General Comment



# Background

## Human Rights House Foundation

1. Human Rights House Foundation (HRHF) protects, empowers and supports human rights defenders and their organisations, and unites them in an international network of Human Rights Houses. HRHF advocates with partner organisations to promote the freedoms of assembly, association, and expression, and the right to be a human rights defender at home and abroad.

## Submission

1. This short submission is made in response to the Human Rights Committee’s invitation to provide written information ahead of the drafting of a new General Comment on article 21 of the International Covenant on Civil and Political Rights, relating to the freedom of peaceful assembly. HRHF welcomes this opportunity, and provides comments based on observations and serious concerns identified by our partners in relation to the enjoyment of freedom of assembly.

# Key issues

## Limited basis for restriction on freedom of assembly

1. The basis for limited restriction on the freedom of peaceful assembly is provided for in the ICCPR. However, interpretation of these restrictions on the part of State authorities is often overzealous, and implementation can be heavy-handed. As a basis for further clarifying the possible legitimate, but limited restriction of freedom of assembly, language elements similar to those in the existing General Comment on freedom of expression should be incorporated, specifically relating to:

*The principle of legality;*

*Restrictions meeting the tests of proportionality and necessity;*

*Application of restrictions only for the purposes for which it is prescribed;*

*The onus of the justification for restrictions lying with the authorities.*

1. Furthermore, the objective of restrictions and limitation should be to “facilitate and protect”, as repeatedly stated by the Committee in its jurisprudence. Proposed restrictions should be justified and communicated to the organisers of an assembly, and any decision should be open to appeal.

## Authorisation from authorities should not be required

1. As noted by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, obligations upon the organisers of public assemblies should be simply to notify authorities of their intention to hold an assembly, and not to request permission. The Special Rapporteur says that a permission or “authorisation-based” regime is:

*“…incompatible with international law and best practices governing freedom of peaceful assembly. Fundamentally, requiring authorization – even when couched as notification – turns the exercise of the right to freedom of peaceful assembly into a privilege. Best practice dictates that States may, at most, require prior notification for peaceful assemblies, not authorization. The purpose of prior notification is to allow authorities to facilitate the exercise of the right to freedom of peaceful assembly, and to take measures to protect protesters, public safety, order and the rights and freedoms of others. The Special Rapporteur acknowledges that assemblies, by their nature, can cause a certain degree of disruption to the normal routine of daily life. However, these only constitute a temporary interference with the rights and activities of others and therefore should be tolerated.”[[1]](#footnote-1)*

1. Examples of illegitimate prior authorisation include organisers of assemblies needing to file civil law contracts with government bodies before filing an application for holding an assembly. Contractual obligations include things like the maintenance of public order, clean-up of the assembly site in question, and provision of medical care. Authorisation can thus be refused until a contract has been completed, and to a degree which fulfils whatever arbitrary specifications the authorities might wish to render. These circumstances devalue the entire meaning of this right, as the State therefore *de facto* refuses to fulfil its positive duty to ensure the exercise of the right to freedom of assembly.
2. HRHF has documented the outcomes of a variety of different assemblies that have “failed” to secure the correct authorisation; failure that leads to dispersals, arrests, detention and sanctions not only of organizers but also of participants. All such outcomes illustrate a failure on the part of the authorities to fulfil their obligations. Furthermore, in this scenario, no provision is made for spontaneous assemblies, including in some instances single-person pickets which can also be sanctioned as a form of assembly[[2]](#footnote-2).

We therefore recommend that:

1. Procedures for organising assemblies should be on a notification basis. The presumption should be in favour of the assembly, and bureaucratic procedures, where deemed essential, should be minimal;
2. All laws and regulations relating to the management of assemblies should be internally consistent with each other and fulfilling international human rights law and standards;
3. Failure to notify authorities of an assembly should not render an assembly unlawful and should not lead to criminal or administrative sanctions against organizers or participants;
4. Single-person pickets and spontaneous assemblies should be specifically excluded from notification requirements and procedures.

**Positive obligations of the State party – to protect and facilitate**

1. The state has a positive obligation to protect and facilitate the right to freedom of assembly at its own cost. For instance, organisers of an assembly should not themselves be required to pay for public services to ensure safety and public order, including the provision of medical support or first aid, law enforcement, or the costs of cleaning up after a public assembly. On the contrary, it is incumbent upon the authorities to ensure the health and safety of all people involved in an assembly, including participants, onlookers, and those who might offer some form of counter assembly or demonstration.
2. Of a similar nature, the right to choose a location for an assembly should not be disproportionately restricted. Assemblies are a legitimate use of public space alongside other legitimate uses including commercial activity or the movement of vehicles and pedestrian traffic, and traffic management during an assembly is part of the responsibility of the appropriate authorities. The authorities can be in particular breach of their obligations when they seek to relegate assemblies to isolated places, with no connection or relevance to the needs or desires of those forming the assembly. As previously stated, public assemblies can cause a degree of temporary disruption to daily life, but should nevertheless be tolerated.

We therefore recommend that:

1. The provision of basic services is part of the positive obligation of the State/authorities, and should not be unfairly borne by those assembling, or by the organisers of an assembly;
2. The choice of the location of a public assembly should be the prerogative of the organisers; and authorities should offer maximum facilitation in ensuring assemblies can occur in a location according to the wishes of the organisers;
3. The primary role of law enforcement is to protect and to ensure the safety and security of the assembly and its participants. The authority to arrest should be part of that protective function in assemblies, but only insofar as to remove from an assembly any individuals who are acting violently, in procedures which are in line with international standards.

**Peaceful protests, dissent and reprisals**

1. Assemblies, rallies, peaceful protests and pickets can be particularly targeted by the authorities if these convey dissenting messages and opinions or are organised by members of those deemed to be in “opposition” to those holding power. Besides receiving administrative and criminal sanctions in connection with legal restrictions on the holding of assemblies, organisers and participants are subjected to intimidation, harassment and assault. Such sanctions can even occur in advance of an assembly, so as to stop an assembly before it begins. All such sanctions and restrictions almost certainly constitute a breach to the freedom of assembly.

We therefore recommend that:

1. Participants in assemblies should be free to choose and express the content of their message, within the limits prescribed by law, and in accordance with international standards;
2. The State must guarantee freedom of expression, and the respect for all to be able to publicly express grievances, dissenting views or beliefs in a peaceful manner without fear of reprisals;
3. No person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest, or based on the content of the message;
4. Any form of criminal attack or reprisal against individuals or groups for the organisation of, participation in or coverage of an assembly should be duly investigated and prosecuted in accordance with the law and in line with international standards.

1. A/HRC/32/36/Add.1 [↑](#footnote-ref-1)
2. It should also be noted that administrative and criminal law, even when based on a “notification” principle, can also unreasonably sanction assemblies. [↑](#footnote-ref-2)