**Half-Day General Discussion on Article 21**

**Joint written Contribution by the International Center for Not-For-Profit Law and the European Center for Not-For-Profit Law**

**Introduction**

The International Center for Not-For-Profit Law (ICNL) and the European Center for Not-For-Profit Law (ECNL) promote an enabling legal environment for civil society around the world and in Europe respectively, through building expertise and capacity on legal issues affecting not-for-profit organizations. We respectfully submit to the attention of the UN Human Rights Committee some recommendations and constructive comments in preparation for General Comment 37 on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights.

Our comments and recommendations are focused on the following topics:

1. **The importance of peaceful assembly rights for asserting respect for economic, social and cultural rights, and for achieving the Sustainable Development Goals more broadly**
2. **Freedom of assembly must be protected and enjoyed without discrimination**
3. **Different types of assemblies worthy of protection**
4. **To what extent does the right of peaceful assembly apply in the digital space? Can “gathering” online impose obligations on States and other actors to facilitate it?**
5. **Restrictions imposed prior to an assembly**
6. **Forms of crowd control and containment (including 'kettling')**
7. **Stop and Search tactics**
8. **Civil liability of participants and/or organisers**
9. **The rights of those who wish to observe and record assemblies and corresponding State obligations how they are policed, including participants, bystanders and media**
10. **Intersection of the right of peaceful assembly with other rights:**
	1. **Intersection with the Right to Privacy**
	2. **Intersection with Freedom of Expression**
	3. **Intersection with Freedom of Association**

You will also find below a summary of the recommendations outlined in our submission. We hope you will find our comments and recommendations useful and that you will include them in the final text of the General Comment.

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 Francesca Fanucci, Senior Legal Consultant, ECNL

 Vanja Skoric, Senior Legal Advisor, ECNL

Nikhil Dutta, Legal Advisor, ICNL

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| **SUMMARY OF RECOMMENDATIONS**1. ***General Comment 37 should explicitly acknowledge that freedom of peaceful assembly is critical to the exercise of economic, social, and cultural rights, and for achieving sustainable development.***
2. ***General Comment 37 should stress that the right to freedom of assembly is to be enjoyed equally by all, without discrimination.***
3. ***General Comment 37 should emphasise that the right to freedom of peaceful assembly extends to a broad range of gatherings, including forms of non-violent direct action such as occupations and intentionally disruptive forms of civil disobedience.***
4. ***General Comment 37 should explicitly acknowledge that with the advent and use of new digital technologies, the definition of “assembly” is no longer limited to a gathering of individuals in a physical space, but that similar interactions can also take place through online platforms.***
5. ***General Comment 37 should reiterate the call upon States to refrain from disrupting internet connectivity, shutting down websites or blocking online users from gaining access to or disseminating information online.***
6. ***General Comment 37 should unequivocally reinforce the Human Rights Committee’s already stated view that the act of publicizing (online or offline) an upcoming assembly should not be penalised in the absence of a “specific indication of what dangers would have been created by the early distribution of the information.”***
7. ***General Comment 37 should refer to the growing development of artificial intelligence-driven technologies that allow public order authorities not only to monitor, but also allegedly to predict potential civil unrest and disrupt peaceful protests before they begin.*** ***General Comment 37 could reflect on the impact and implications of the use of such tools on the right to peaceful assembly and clarify to what extent it would be compatible with the three-part test of legality, necessity/proportionality and legitimacy required by the international human rights standards.***
8. ***General Comment 37 should clarify that existing legislative restrictions on freedom of assembly or those imposed by the authority prior to the event need to be clearly worded in order to provide certainty for everyone involved. The authority should not impose restrictions simply to pre-empt possible disorder or interference with the rights of others. In particular, blanket legislative provisions, which ban assemblies at special times or in particular locations, should be regarded as being presumptively disproportionate (and if introduced, must be justified by compelling reasons).***
9. ***General Comment 37 should highlight that counter-terrorism measures are particularly challenging to the right to freedom of peaceful assembly. Domestic legislation designed to counter terrorism or extremism should narrowly define the terms “terrorism” and “extremism” so as not to include forms of civil disobedience and protest, the pursuit of certain political, religious or ideological ends, or attempts to exert influence on other sections of society, the government or international opinion. Furthermore, any discretionary powers given to law- enforcement officials should be narrowly framed and include adequate safeguards to reduce the potential for arbitrariness.***
10. ***General Comment 37 should note and point out the practice of emergency legislation commonly introduced to increase police stop-and-search powers, which may also extend the time period allowed for administrative detention without charge. Other examples of pre-emptive measures include the proscription of particular organizations and the criminalization of expression of support for them, the creation of offences concerning provocation to or advocacy of extremism and/or terrorism, and the imposition of border controls to prevent entry by individuals deemed likely to demonstrate and cause disturbances to public order. General Comment 37 should highlight that all of these have a detrimental impact on the right to freedom of peaceful assembly, and all must be shown to be necessary and strictly proportionate.***
11. ***General Comment 37 should clarify that intrusive pre-emptive measures should not be used unless a clear and present danger of imminent violence that is likely to occur actually exists. Any arrests should be exercised consistently with international human rights standards, including those relating to due-process rights and the rights to privacy and liberty***
12. ***General Comment 37 should incorporate the principle that individuals, groups and associations have the right to “promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels.”***
13. ***General Comment 37 should also clarify that the costs of facilitating assemblies, including security and safety measures, should be fully covered by the public authorities and there should be no charge for the organisers. Similarly, the responsibility to clean up after a public assembly should lie with the authorities. To require assembly organisers to pay such costs and imposing onerous financial requirements is likely to constitute a disproportionate prior restraint***.
14. ***The Human Rights Committee has discussed extensively the chilling effect of criminal and administrative liability, of vaguely worded provisions imposing liability and various offences relating to ‘terrorism’ and national security and has emphasised ‘the need for careful scrutiny’ where ‘broad and unspecific terms’ are used in the formulation of offences under National Security legislation. In this regard, General Comment 37 should require that the State parties specify the precise nature of the threat allegedly posed by the exercise of the freedom of expression/assembly.***
15. ***The Human Rights Committee has also touched upon whether the individual participants can be held liable for taking part in an ‘unlawful assembly’ or ‘unauthorised’ gathering where the organisers may have failed to comply with the requisite notification or authorization procedure. General Comment 37 should follow up on this and further reinforce the Human Rights Committee’s conclusions so as to preclude liability for participants who take part in an unnotified or unauthorised assembly if they themselves remain peaceful – at the very least, until such time as the police audibly request dispersal on the basis of the assembly not having been notified or authorised.***
16. ***General Comment should clarify that methods of crowd control and containment – including the tactic known in the United Kingdom as “kettling” – must only be used exceptionally, as it fails to distinguish between participants and non-participants, or between peaceful and non-peaceful participants. General Comment 37 might helpfully recognize that such measures may also constitute an interference with the right to freedom of movement (Article 12 ICCPR) and the right to liberty (Article 9 ICCPR).***
17. ***General Comment 37 should consider how the use of the tactic of stop-and-search by law enforcement against individuals organizing or participating in an assembly may affect the rights to liberty and bodily security, as well as privacy.***
18. ***General Comment 37 should clarify that as a general rule, organisers of assemblies should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. In general, while assembly organisers may be obliged to make reasonable efforts to comply with legal requirements, they should not be held liable for the actions of individual participants or for the actions of non-participants.***
19. ***General Comment 37 should reinforce the widely shared principle that the right to observe and record assemblies and how they are policed is not limited to professional journalists and media but must also be granted to other stakeholders in civil society, such as human rights activists, non-governmental organisations (NGOs) and civil society organisations in general. There should be a corresponding obligation on the State to distinguish these third-party observers from participants in assemblies.***
20. ***General Comment 37 should additionally recognise that assembly participants may themselves legitimately observe and record the activities taking place during assemblies (including the actions of law enforcement officials).***
21. ***General Comment 37 should also reiterate the principle that even in cases of legitimate dispersal of an assembly, the authorities policing the operation should not prevent those present from observing and recording the operations implementing the order of dispersal***.
22. ***General Comment 37 should include and apply the notion of dispersal to online assemblies, connecting it with examples of restriction of online traffic, internet shutdowns, etc. and clarifying when such dispersal is incompatible with the protection granted under Article 21 of the ICCPR.***
23. ***General Comment 37 should formally acknowledge that the need to protect the right to privacy of participants in assemblies (even in public spaces) is critical to the exercise of the right to peaceful assembly, both offline and online.***
24. ***General Comment 37 should also incorporate the view that while there may on occasion be legitimate law enforcement reasons for public authorities to record an assembly (specifically, where unlawful conduct is taking place or where there is a reasonable suspicion based on compelling and demonstrable evidence that imminent unlawful activities are likely to occur), the routine surveillance and recording with far-reaching technologies that intimidate or harass participants in peaceful assemblies is an unjustified, disproportionate and unnecessary interference both with their right to privacy and their right to peaceful assembly***.
25. ***With particular regard to the collection of personal information and data of participants in online or offline assemblies, General Comment 37 should emphasise the need for a high threshold when applying the three-part test of legality, necessity and proportionality to such practices, based on the level of intrusiveness of such practices.***
26. ***General Comment 37 should also take note of the development of new artificial intelligence-driven technologies – such as predictive facial recognition software enabling public authorities to identify potential protesters so that they can be questioned and detained even before they actually take part in assemblies – and clarify when the use of such tools is an impermissible interference both with the right to privacy and the right to peaceful assembly of the individuals affected.***
27. ***General Comment 37 should provide guidance on the relationship between Article 19 (freedom of opinion and expression) and Article 21 of the ICCPR, reiterating that while freedom of expression often underpins the enjoyment of the right to freedom of assembly, freedom of peaceful assembly should not be regarded merely as a sub-category of freedom of expression***.
28. ***General Comment 37 should recognise that the right to freedom of peaceful assembly does not only have an expressive/communicative value, but also an associational value, since it can contribute to fostering networks of solidarity and strengthening group identities.***
29. ***When detailing out the examples of impermissible interferences with the right of peaceful assembly, the General Comment should ideally also analyse and highlight the related impact that such interferences would have on the right to freedom of association.***
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1. **The importance of peaceful assembly rights for asserting respect for economic, social and cultural rights, and for achieving the Sustainable Development Goals more broadly:**

***General Comment 37 should explicitly acknowledge that freedom of peaceful assembly is critical to the exercise of economic, social, and cultural rights, and for achieving sustainable development.***

As the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly observe, “[t]he protection of the right to freedom of assembly also underpins the realization of both social and economic rights (including employment and labour interests) and so-called ‘third generation’ rights (such as the right to a healthy environment).”[[1]](#footnote-1)

Peaceful assembly rights are critical to the implementation of workers and employers’ right to organise in order to protect their economic and social interests.[[2]](#footnote-2) The Charter of Fundamental Rights of the European Union makes this connection explicit and extends its scope, providing that “[e]veryone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union, and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.”[[3]](#footnote-3) The European Social Charter of the Council of Europe further emphasizes the importance of the right to organise for the protection of economic and social interests, declaring that, “With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom.”[[4]](#footnote-4)

UN mandate holders have also emphasized the importance of peaceful assembly rights in enabling public participation and engagement, accountability, partnership, and dialogue, which are critical to ensuring respect for economic, social, and cultural rights and achieving the Sustainable Development Goals. In particular, in their 2016 joint report to the United Nations (UN) Human Rights Council on the proper management of assemblies, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on extrajudicial, summary or arbitrary executions noted:

“Assemblies are also an instrument through which other social, economic, political, civil and cultural rights can be expressed, meaning they play a critical role in protecting and promoting a broad range of human rights. They can be instrumental in amplifying the voices of people who are marginalized or who present an alternative narrative to established political and economic interests. Assemblies present ways to engage not only with the State, but also with others who wield power in society, including corporations, religious, educational and cultural institutions, and with public opinion in general.”[[5]](#footnote-5)

In his 2018 report to the General Assembly of the UN on the linkages between the exercise of the rights to freedom of peaceful assembly and of association and the implementation of the 2030 Agenda for Sustainable Development, the Special Rapporteur on the rights to freedom of peaceful assembly and of association also explained that the right to freedom of peaceful assembly (and its exercise): (1) “empower[s] the most marginalized, underrepresented and vulnerable individuals, groups and populations by mobilizing public opinion and political will, raising awareness of societal issues and challenges, enhancing participation in decision-making and bringing unique knowledge and experience to shape policies and strategies and build solutions,” thus “giv[ing] a voice to and allow[ing] the participation of the beneficiaries of the Sustainable Development Goals”; (2) “helps to create, strengthen and expand an enabling environment, at the national and international levels, through which all actors, including civil society, can contribute meaningfully to achieving all of the Goals and their targets, as well as the integrity of the process, by participating and expressing their views and shaping policies”; (3) “promotes transparency by addressing inequality, corruption, governance failures and injustice, which impede the realization of the Goals,” and “ensures the effective monitoring of compliance with States’ pledges by holding institutions to account for the implementation of the Goals and targets”; (4) helps to build a global partnership for sustainable development “within and across national boundaries to overcome the challenges to realizing the Goals and to bring together beneficiaries, Governments, private businesses, civil society, the United Nations and other actors"; and (5) “provides an essential foundation for social dialogue, effective labour market governance and the realization of decent work and other rights, through representation, negotiation, mobilization and dialogue.”[[6]](#footnote-6)

1. **Freedom of assembly must be protected and enjoyed without discrimination**

***General Comment 37 should stress that the right to freedom of assembly is to be enjoyed equally by all, without discrimination.***

The OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly explicitly acknowledge that states and relevant authorities must not discriminate against any individual or group on any grounds.[[7]](#footnote-7) This obligation is reiterated by the Special Rapporteurs on the rights to freedom of peaceful assembly and of association, and on extrajudicial, summary or arbitrary executions in their 2016 joint report on the proper management of assemblies.[[8]](#footnote-8)

The UN Human Rights Committee has indicated that the right to freedom of peaceful assembly can be exercised by non-citizens,[[9]](#footnote-9) including migrant workers[[10]](#footnote-10) and refugees and asylum-seekers.[[11]](#footnote-11) The UN Convention on the Rights of the Child provides that this right may be exercised by children as well.[[12]](#footnote-12) The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association further underlined in his 2014 thematic report to the UN Human Rights Council that the right to freedom of peaceful assembly may be exercised by groups most at risk, including: “persons with disabilities; youth, including children; women; lesbian, gay, bisexual, transgender and intersex (LGBTI) people; members of minority groups; indigenous peoples; internally displaced persons; and non-nationals, including refugees, asylum seekers and migrant workers.”[[13]](#footnote-13)

The Human Rights Committee has also made clear that the right to freedom of assembly must not be applied in a way that discriminates.[[14]](#footnote-14) Article 26 of the ICCPR provides: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” In *Toonen v Australia*, the Committee concluded that “the reference to ‘sex’ in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.”[[15]](#footnote-15) The European Commission on Human Rights also clarified that freedom of peaceful assembly can be exercised by both individuals and corporate bodies.[[16]](#footnote-16)

1. **Different types of assemblies worthy of protection:**

***General Comment 37 should emphasise that the right to freedom of peaceful assembly extends to a broad range of gatherings, including forms of non-violent direct action such as occupations and intentionally disruptive forms of civil disobedience.***

In their 2016 joint report on the proper management of assemblies, the Special Rapporteurs on the rights to freedom of peaceful assembly and of association, and on extrajudicial, summary or arbitrary executions, explained that “[a]n ‘assembly’, generally understood, is an intentional and temporary gathering in a private or public space for a specific purpose, and can take the form of demonstrations, meetings, strikes, processions, rallies or sit-ins with the purpose of voicing grievances and aspirations or facilitating celebrations. While an assembly is defined as a temporary gathering, this may include long-term demonstrations, including extended sit-ins and ‘occupy’-style manifestations.”[[17]](#footnote-17) The Special Rapporteurs further noted that “[a]ssemblies are an equally legitimate use of public space as commercial activity or the movement of vehicles and pedestrian traffic.”[[18]](#footnote-18)

The European Court of Human Rights (ECtHR) has echoed these conclusions, finding that even intentionally disruptive conduct, is still entitled to protection as an exercise of the right to peaceful assembly. In *Kudrevičius v Lithuania*, the ECtHR noted that even where protesters engage in “physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others,” this conduct is not of “such a nature and degree as to remove their participation in the demonstration from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention.”[[19]](#footnote-19) In *Oya Ataman v Turkey*, the ECtHR similarly stated that “where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.”[[20]](#footnote-20) In *Eva Molnar v Hungary*, the ECtHR emphasized, that though “restrictions on freedom of peaceful assembly in public places may serve the protection of the rights of others with a view to preventing disorder and maintaining the orderly circulation of traffic,”[[21]](#footnote-21) “one of the aims of freedom of assembly is to secure a forum for public debate and the open expression of protest,” so that it is important to afford demonstrators an opportunity to “manifest their views.”[[22]](#footnote-22)

Critically, the ECtHR applied these same principles in cases of non-violent resistance or civil disobedience, as in *Taranenko v Russia*,[[23]](#footnote-23), observing that “the protesters’ conduct, although involving a certain degree of disturbance and causing some damage, did not amount to violence,”[[24]](#footnote-24) and concluding that “although a sanction for the applicant’s actions might have been warranted by the demands of public order, the lengthy period of detention pending trial and the long suspended prison sentence imposed […] were not proportionate to the legitimate aim pursued.”[[25]](#footnote-25) The ECtHR has thus determined instances of non-violent resistance or civil disobedience to fall within the scope of protection of the right to freedom of peaceful assembly. UN mandate holders have similarly expressed concern about “the application of disproportional charges for what appears to be the exercise of the rights to peaceful and non-violent protest and freedom of expression” in the case of the “Stansted 15” protest in the United Kingdom, in which protesters secured themselves to an aircraft in order to prevent a deportation flight.[[26]](#footnote-26)

1. **To what extent does the right of peaceful assembly apply in the digital space? Can “gathering” online impose obligations on States and other actors to facilitate it?**

It is well established in international human rights law that there are many legitimate ways in which individuals may use (physical) public spaces, and that assemblies are an equally legitimate use of public space as commercial activities or the movement of vehicles and pedestrian traffic. This cardinal principle should of course be reflected in General Comment 37. However, ***General Comment 37 should also explicitly acknowledge that with the advent and use of new digital technologies, the definition of “assembly” is no longer limited to a gathering of individuals in a physical space[[27]](#footnote-27), but that similar interactions can also take place through online platforms.***[[28]](#footnote-28)

The distinctive value of online activity is also highlighted by the jurisprudence of the ECtHR, when it recognises that in some circumstances, online platforms are the only means accessible to individuals to disseminate political content ignored by state-controlled traditional media and to reach out to potential like-minded people.[[29]](#footnote-29) The U.S. Supreme Court has also described social media as “the modern public square”[[30]](#footnote-30) and other recent judicial cases in the United States have also extended the notion of “public forum” to online pages of public government figures in social media platforms, due to their interactive component, declaring that the participants in such forums cannot be removed from them simply because of their critical views expressed in that context. [[31]](#footnote-31)

As a result, the right to freedom of assembly that people have offline must also be protected in the digital space.[[32]](#footnote-32) In particular: ***General Comment 37 should reiterate the call upon States to refrain from disrupting internet connectivity, shutting down websites or blocking online users from gaining access to or disseminating information online.***[[33]](#footnote-33)

These restrictive practices aim to impede the organisation or advertising of assemblies, both online and offline, and therefore are rarely compatible with the three-part test of legality, necessity/proportionality and legitimacy required by the international human rights standards.[[34]](#footnote-34) Acknowledging that the planning, organisation and advertising of assemblies has been radically transformed by the use of new digital technologies and social media in particular,

***General Comment 37 should unequivocally reinforce the Human Rights Committee’s already stated view that the act of publicizing (online or offline) an upcoming assembly should not be penalised in the absence of “specific indication of what dangers would have been created by the early distribution of the information.”***[[35]](#footnote-35)

This would also be in line with the cases taken up by, and communications issued under the mandate of, the UN Special Rapporteur on the right to freedom of peaceful assembly and of association, which include “prohibitions of the use of private websites, including social networking websites such as Facebook and Twitter to disseminate any information about politics, economics and cultural affairs that is regarded as general or public.”[[36]](#footnote-36)

Last but not least, ***General Comment 37 should refer to the growing development of artificial intelligence-driven technologies that allow public order authorities not only to monitor, but also allegedly to predict potential civil unrest and disrupt peaceful protests before they begin.***[[37]](#footnote-37) ***General Comment 37 could reflect on the impact and implications of the use of such tools on the right to peaceful assembly and clarify to what extent it would be compatible with the three-part test of legality, necessity/proportionality and legitimacy required by the international human rights standards.***

1. **Restrictions imposed prior to an assembly:**

***General Comment 37 should clarify that existing legislative restrictions on freedom of assembly or those imposed by the authority prior to the event need to be clearly worded in order to provide certainty for everyone involved. The authority should not impose restrictions simply to pre-empt possible disorder or interference with the rights of others. In particular, blanket legislative provisions, which ban assemblies at special times or in particular locations, should be regarded as being presumptively disproportionate (and if introduced, must be justified by compelling reasons).***[[38]](#footnote-38)

The ECtHR has also stated that, “[s]weeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.”[[39]](#footnote-39) In addition, the right to freedom of peaceful assembly includes the right to plan, organise, promote and advertise an assembly in any lawful manner. Any restrictions on such activities should be considered as a prior restriction. Moreover, restrictions on freedom of association and of expression may also effectively serve as a restriction on freedom of peaceful assembly.[[40]](#footnote-40)

***General Comment 37 should highlight that counter-terrorism measures are particularly challenging to the right to freedom of peaceful assembly. Domestic legislation designed to counter terrorism or extremism should narrowly define the terms “terrorism” and “extremism” so as not to include forms of civil disobedience and protest, the pursuit of certain political, religious or ideological ends, or attempts to exert influence on other sections of society, the government or international opinion. Furthermore, any discretionary powers given to law-enforcement officials should be narrowly framed and include adequate safeguards to reduce the potential for arbitrariness.***

The ECtHR in *Gillan and Quinton v. the United Kingdom* (2010) found police stop-and- search powers under section 44 of the United Kingdom’s “Terrorism Act” of 2000 not to be “in accordance with the law” for the purposes of Article 8 of the European Convention on Human Rights (the right to private and family life). This was, in part, due to the breadth of the powers (the exercise of which did not require reasonable suspicion on the part of the police officer) and also the lack of adequate safeguards against arbitrariness: “such a widely framed power could be misused against demonstrators and protestors” (see paras. 76-87). In addition, therefore:

***General Comment 37 should note and point out the practice of emergency legislation commonly introduced to increase police stop-and-search powers, which may also extend the time period allowed for administrative detention without charge. Other examples of pre-emptive measures include the proscription of particular organizations and the criminalization of expression of support for them, the creation of offences concerning provocation to or advocacy of extremism and/or terrorism, and the imposition of border controls to prevent entry by individuals deemed likely to demonstrate and cause disturbances to public order. General Comment 37 should highlight that all of these have a detrimental impact on the right to freedom of peaceful assembly, and all must be shown to be necessary and strictly proportionate***.[[41]](#footnote-41)

Of particular concern are the arrests of potential assembly participants and/or organisers prior to the event itself:

***General Comment 37 should clarify that intrusive pre-emptive measures should not be used unless a clear and present danger of imminent violence that is likely to occur actually exists. Any arrests should be exercised consistently with international human rights standards, including those relating to due-process rights and the rights to privacy and liberty.***[[42]](#footnote-42)

Another form of abusive pre-emptive measures is travel restrictions imposed on potential participants in order to prevent them from participating in assemblies outside their country of residence.

***General Comment 37 should incorporate the principle that individuals, groups and associations have the right ”to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels”.***[[43]](#footnote-43)

***General Comment 37 should also clarify that the costs of facilitating assemblies, including security and safety measures should be fully covered by the public authorities and there should be no charge for the organisers. Similarly, the responsibility to clean up after a public assembly should lie with the authorities. To require assembly organisers to pay such costs (and imposing onerous financial requirements more generally) is likely to constitute a disproportionate prior restraint***.[[44]](#footnote-44)

***The Human Rights Committee has discussed extensively the chilling effect of criminal and administrative liability,[[45]](#footnote-45) of vaguely worded provisions imposing liability[[46]](#footnote-46) and various offences relating to ‘terrorism’ and national security[[47]](#footnote-47) and has emphasised ‘the need for careful scrutiny’ where ‘broad and unspecific terms’ are used in the formulation of offences under National Security legislation. In this regard, General Comment 37 should require that the State parties specify the precise nature of the threat allegedly posed by the exercise of the freedom of expression/assembly.***[[48]](#footnote-48)

***The Human Rights Committee has also touched upon whether the individual participants can be held liable for taking part in an ‘unlawful assembly’[[49]](#footnote-49) or ‘unauthorised’ gathering[[50]](#footnote-50) where the organisers may have failed to comply with the requisite notification or authorization procedure. General Comment 37 should follow up on this and reinforce the Human Rights Committee’s conclusions so as to preclude liability for participants in an unnotified or unauthorised assembly if they themselves remain peaceful – at the very least, until such time as the police audibly request dispersal on the basis of the assembly not having been notified or authorised.***

1. **Forms of crowd control and containment (including "kettling“):**

***General Comment 37 should clarify that methods of crowd control and containment – including the tactic known in the United Kingdom as “kettling” – must only be used exceptionally, as it fails to distinguish between participants and non-participants, or between peaceful and non-peaceful participants.***

Having an absolute cordon permitting no passage from a particular area potentially violates individual rights to liberty and freedom of movement. A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance.[[51]](#footnote-51) In addition, management of assemblies must take into account the presence of “non-participants” (such as bystanders or observers) in the close range of an assembly. Authorities should not treat a crowd as homogenous, particularly in detaining participants, restricting their movements or when dispersing an assembly.[[52]](#footnote-52) As also noted by the United Kingdom’s Joint Committee on Human Rights, “it would be a disproportionate and unlawful response to cordon a group of people and operate a blanket ban on individuals leaving the contained area, as this fails to consider whether individual circumstances require a different response”.[[53]](#footnote-53)Moreover,

***General Comment 37 might helpfully recognize that such measures may also constitute an interference with the right to freedom of movement (Article 12 ICCPR) and the right to liberty (Article 9 ICCPR).***

1. **Stop and Search tactics:**

***General Comment 37 should consider how the use of the tactic of stop-and-search by law enforcement against individuals organizing or participating in an assembly may affect the rights to liberty and bodily security, as well as privacy.***

Stop-and-search must not be arbitrary and must not violate the principle of non-discrimination. It must be authorised by law, and be necessary and proportionate.[[54]](#footnote-54) The mere fact that an individual is participating in a peaceful assembly does not constitute reasonable grounds for conducting a search.[[55]](#footnote-55) In general, participants on their way or participating in an assembly should not be stopped or searched unless there is a reasonable suspicion that the individual concerned is committing, or is about to commit, an offence.[[56]](#footnote-56) Any search by the authorities of a person interferes with his or her private life. Authorities should establish clear protocols for the stop and search of participants in assemblies, to provide guidance when such measures are appropriate and when they are not, how they should be conducted, and how individuals are to be dealt with following arrest. These should be based on international jurisprudence concerning the rights to private and family life, to liberty and to freedom of movement.[[57]](#footnote-57)

1. **Civil liability of participants and/or organisers:**

***General Comment 37 should clarify that as a general rule, organisers of assemblies should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. In general, while assembly organisers may be obliged to make reasonable efforts to comply with legal requirements, they should not be held liable for the actions of individual participants or for the actions of non-participants.***

Holding the organisers of an event liable would be a manifestly disproportionate response, since this would imply that organisers are imputed to have responsibility for acts by other individuals. Instead, there should be individual liability for any individual who personally commits an offence or fails to carry out the lawful directions of law-enforcement officials.[[58]](#footnote-58)

1. **The rights of those who wish to observe and record assemblies and corresponding State obligations, including participants, bystanders and media**

***General Comment 37 should reinforce the widely shared principle that the right to observe and record assemblies and how they are policed is not limited to professional journalists and media but must also be granted to other stakeholders in civil society, such as human rights activists, non-governmental organisations (NGOs) and civil society organisations in general***.[[59]](#footnote-59) ***There should be a corresponding obligation on the State to distinguish these third-party observers from participants in assemblies.***

***General Comment 37 should additionally recognise that assembly participants may themselves legitimately observe and record the activities taking place during assemblies (including the actions of law enforcement officials).***

A case recently submitted to the ECtHR also brings into sharp focus the need for States to recognise the spectrum of different actors who may legitimately seek to undertake assembly monitoring, noting that this work necessarily extends to unnotified (or unauthorised) assemblies, and that different monitors may employ significantly different methods to collect, impart and/or disseminate information.[[60]](#footnote-60)

***General Comment 37 should also reiterate the principle that even in cases of legitimate dispersal of an assembly, the authorities policing the operation should not prevent those present from observing and recording the operations implementing the order of dispersal***.[[61]](#footnote-61)

Furthermore, ***General Comment 37 should include and apply the notion of dispersal to online assemblies, connecting it with examples of restriction of online traffic, internet shutdowns, etc. and clarifying when such dispersal is incompatible with the protection granted under Article 21 of the ICCPR.***

1. **Intersection of the right of peaceful assembly with other rights:**
	1. **Right to privacy (in particular for secure communications, implications of mass data collection, use of facial recognition technology, artificial intelligence, etc.). May unmanned weapon or surveillance systems (remote or autonomous) be used by law enforcement officials during demonstrations?**

***General Comment 37 should formally acknowledge that the need to protect the right to privacy of participants in assemblies is critical to the exercise of the right to peaceful assembly, both offline and online.***

In relation to physical assemblies, “while the proposition that an individual might reasonably expect a degree of privacy during a public protest – an event seeking to attract public attention – might seem far-fetched, it is less so when one considers (a) the multi-faceted nature of personal autonomy protected by the right to privacy (including a person’s ‘physical and psychological integrity’ which might itself be contingent on the age, or other relevant characteristic, of the individual concerned), (b) the multiple ways in which such autonomy might be interfered with, and the extent of any such intrusions (from overt photography to the covert deployment of undercover officers, and from the processing and storage of data to its possible disclosure to third parties); (c) the differential purposes which the police might be pursuing (from investigating a specific criminal offence to profiling individual protesters in case they might become involved in future disorder), and (d) the need also to recognize the value of anonymity to public protest.”[[62]](#footnote-62)

Online privacy, in particular, is crucial for the organisation and conduct of assemblies.[[63]](#footnote-63) Online anonymity can facilitate political mobilization (especially where it would be otherwise risky due to oppressive undemocratic regimes), foster collaboration, enhance creativity and encourage individuals to explore new ideas. The assumption of “toxic inhibition” – i.e., that anonymity “allows bad behaviour to flourish” – must be seen alongside evidence that anonymity “also enables normatively positive behaviour.”[[64]](#footnote-64) The importance of online privacy for the realisation of the right to freedom of peaceful assembly and association has also been recognised by the first UN Human Rights Council on the promotion, protection and enjoyment of human rights on the Internet.[[65]](#footnote-65)

***General Comment 37 should also incorporate the view that while there may on occasion be legitimate law enforcement reasons for public authorities to record an assembly (specifically, when unlawful conduct is taking place or where there is a reasonable suspicion based on compelling and demonstrable evidence that unlawful activities are likely to occur), the routine surveillance and recording with far-reaching technologies that intimidate or harass participants in peaceful assemblies is an unjustified, disproportionate and unnecessary interference both with their right to privacy and their right to peaceful assembly***.[[66]](#footnote-66)

***With particular regard to the collection of personal information and data of participants in online or offline assemblies, General Comment 37 should emphasise the need for a high threshold when applying the three-part test of legality, necessity and proportionality to such practices, based on the level of intrusiveness of such practices.***[[67]](#footnote-67)

***General Comment 37 should also take note of the development of new artificial-intelligence driven technologies – such as predictive facial recognition software enabling public authorities to identify potential protesters so that they can be questioned and detained even before they actually take part in assemblies[[68]](#footnote-68) - and clarify when the use of such tools is an impermissible interference both with the right to privacy and the right to peaceful assembly of the individuals affected.***

* 1. **Intersection with the right to freedom of expression (Article 19, ICCPR)**

***General Comment 37 should provide guidance on the relationship between Article 19 (freedom of opinion and expression) and Article 21 of the ICCPR, reiterating that freedom of expression underpins the enjoyment of the right to freedom of assembly[[69]](#footnote-69) whilst stressing at the same time that freedom of peaceful assembly should not be regarded merely as a sub-category of freedom of expression***.[[70]](#footnote-70)

It should also be noted that the ECtHR has recognized that in cases implicating both freedom of assembly and freedom of expression, “the thrust of the applicants’ complaint” will furnish the *lex specialis* of the case, which should be considered in light of the *lex generalis* of the other right raised.[[71]](#footnote-71)

* 1. **Intersection with the right to freedom of association (Article 22, ICCPR)**

***General Comment 37 should recognise that the right to freedom of peaceful assembly does not only have an expressive/communicative value, but also an associational value, since it can contribute to fostering networks of solidarity and strengthening group identities.***[[72]](#footnote-72)

More specifically, the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly state that, “Since the right to assemble presumes the active presence of others for its realization, restrictions of freedom of association (Article 22 of the ICCPR and Article 11 of the European Convention on Human Rights) will often undermine the right to assemble. Freedom of association encompasses the ability of groups of individuals to organise collectively and to mobilize in protest against the state and/or other interests. Restrictions on the right to freedom of association that might undermine freedom of assembly include requiring formal registration before an association can lawfully assemble, prohibiting the activities of unregistered groups, prescribing the scope of an association’s mandate, rejecting registration applications, disbanding or prohibiting an association, or imposing onerous financial preconditions.”[[73]](#footnote-73) For this reason,

***When detailing out the examples of impermissible interferences to the right of peaceful assembly, General Comment should ideally also analyse and highlight the related impact that such interferences would have on the right to freedom of association.***

1. OSCE Office for Democratic Institutions and Human Rights (ODIHR) *Guidelines on Freedom of Peaceful Assembly* (2d ed. 2010), Notes, p. 24 [↑](#footnote-ref-1)
2. Article 11 of the ILO Convention concerning Freedom of Association and Protection of the Right to Organise provides: “Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.” [↑](#footnote-ref-2)
3. Charter of Fundamental Rights of the EU, Article 12 (Freedom of Assembly and of Association) [↑](#footnote-ref-3)
4. European Social Charter (revised), Article 5 (The right to organise) [↑](#footnote-ref-4)
5. 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 6. [↑](#footnote-ref-5)
6. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/73/279), paras 103-107 [↑](#footnote-ref-6)
7. OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly,* (2d ed. 2010), para 2.5 [↑](#footnote-ref-7)
8. 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), paras 15-16 [↑](#footnote-ref-8)
9. Kuwait, CCPR/C/KWT/CO/3, 11 August 2016, para 42 (‘The Committee is concerned about article 12 of Law No. 65 (1979) on public gatherings, as it bars non-Kuwaitis from participating in public gatherings.’). *See also* Kuwait, *List of issues in relation to the third periodic report of Kuwait*, CCPR/C/KWT/Q/3, 4 December 2015, para 21; Monaco, *List of Issues … in connection with the … second periodic report of Monaco*, CCPR/C/MCO/Q/2, 7 August 2008, para 16 (‘Does the State party envisage extending the scope of article 29 of the Constitution concerning the right of peaceful assembly to all persons under Monegasque jurisdiction?’). [↑](#footnote-ref-9)
10. Dominican Republic, CCPR/C/DOM/CO/6, 27 November 2017, para 31 (‘[The Committee] regrets the lack of information on the steps taken to safeguard the right of migrant workers to freedom of assembly and association, which includes the right to engage in trade union activities without the exercise of these rights triggering the loss of their employment or their deportation.’) [↑](#footnote-ref-10)
11. Nepal, CCPR/C/NPL/CO/2, 15 April 2014, para 14 (‘The State party should … ensure, in law and in practice, that all refugees and asylum-seekers are not subjected to arbitrary restrictions of their rights under the Covenant, including freedom of expression, assembly and association.’) [↑](#footnote-ref-11)
12. UN Convention on the Rights of the Child, Art. 15 (‘1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.’) [↑](#footnote-ref-12)
13. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/26/29), 14 April 2014, para. 10 [↑](#footnote-ref-13)
14. *,* *E.g.*, Mongolia, CCPR/C/MNG/CO/6, 22 August 2017, paras 11-12: (‘The Committee is also concerned about the notable obstacles to the exercise of freedom of assembly by persons belonging to the lesbian, gay, bisexual, transgender and intersex community, which further exacerbates their vulnerable status in Mongolian society … The State party should also promote and guarantee freedom of expression, association and peaceful assembly for lesbian, gay, bisexual, transgender and intersex persons, and should abstain from any unjustified interference with the exercise of these rights and ensure that any restrictions imposed comply with the strict requirements of articles 19, 21 and 22 of the Covenant and are not applied in a discriminatory manner.’); Cameroon, CCPR/C/CMR/CO/5, 30 November 2017, paras 41-42 (‘[The Committee] is also concerned at reports of infringements of the freedom of assembly, especially in the context of the crisis in English-speaking parts of the country, … the State party should (d) lift any unnecessary restrictions on the freedom of assembly and the freedom to demonstrate, in particular for members of the country’s English-speaking minority.’); Iraq, CCPR/C/IRQ/CO/5, 3 December 2015, paras 11-12 (‘Taking into consideration the State party’s comment in its periodic report (see CCPR/C/IRQ/5, para. 177), the Committee regrets the lack of clarity on the right of homosexuals to hold peaceful demonstrations. 12. The State party should: … (b) Take the measures necessary to ensure that such persons can fully enjoy all the human rights enshrined in the Covenant, including the right to peaceful assembly.’); Austria, CCPR/C/AUT/CO/5, 3 December 2015, para 31 (‘The Committee is concerned that some provisions of the 2015 Amendments to the Law on the Recognition of Islamic Religious Communities may be discriminatory and unduly restrict the enjoyment of the right to freedom of religion in community with others, as well as the rights to association and assembly (arts. 18, 22 and 26).’); Sri Lanka, CCPR/C/LKA/CO/5, 21 November 2014, paras 22-23 (‘The Committee is concerned at the disproportional and discriminatory restrictions on freedom of peaceful assembly and freedom of association against the Tamil minority.’); Bulgaria, CCPR/C/BGR/Q/3, *List of Issues … in connection with … the third periodic report of Bulgaria*, 3 December 2010, para 26 (‘Please comment on allegations that peaceful assemblies and associations by ethnic Macedonians are suppressed because the Government denies the self-identification of certain citizens as ethnic Macedonians.’) [↑](#footnote-ref-14)
15. Communication No 488/1992, *Toonen v Australia* (CCPR/C/50/D/488/1992), 4 April 1994, para 8.7 [↑](#footnote-ref-15)
16. European Commission on Human Rights, *Christians against Racism and Fascism v the United Kingdom* (1980), p. 148 (“[Freedom of peaceful assembly] is moreover a freedom capable of being exercised not only by the individual participants of such demonstration, but also by those organising it, including a corporate body such as the applicant association.”). [↑](#footnote-ref-16)
17. 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 10 [↑](#footnote-ref-17)
18. 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 32 [↑](#footnote-ref-18)
19. ECtHR, *Kudrevičius v Lithuania*, Application no. 37553/05, judgment of 15 October 2015 [GC], paras 97-98: more precisely, the Court observed that such conduct “is not at the core of that freedom as protected by Article 11 of the Convention,” but the Court ultimately concluded that the participants in this conduct were “entitled to invoke the guarantees of Article 11 (para 99) [↑](#footnote-ref-19)
20. ECtHR, *Oya Ataman v. Turkey*, Application no. 74552/01, judgment of 5 December 2006, paras 41-42 [↑](#footnote-ref-20)
21. ECtHR, *Eva Molnar v Hungary*, Application no. 10346/05, judgment of 7 October 2008, para 34 [↑](#footnote-ref-21)
22. *Ibid,* paras 42-43 [↑](#footnote-ref-22)
23. ECtHR, *Tarenenko v Russia*, Application no. 19554/05, judgment of 15 May 2014, para 71 (the applicant “was part of a group of about forty people who forced their way through identity and security checks into the reception area of the President’s Administration building and locked themselves in one of the offices, where they started to wave placards and to distribute leaflets out of the windows”) [↑](#footnote-ref-23)
24. *Ibid*, para 93 [↑](#footnote-ref-24)
25. *Ibid*, para 95 [↑](#footnote-ref-25)
26. “UK must stop disproportionate use of security laws after conviction of Stansted 15, say UN rights experts,” OHCHR.org (6 February 2019), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24141&LangID=E> (describing statement by Mr. Seong-Phil Hong (Republic of Korea), Chair-Rapporteur of the Working Group on Arbitrary Detention; Mr. David Kaye (USA), Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr. Michel Forst (France), Special Rapporteur on the situation of human rights defenders; Ms. Fionnuala Ní Aoláin (Ireland), Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Mr. Clément Nyaletsossi Voule (Togo), Special Rapporteur on the rights to freedom of peaceful assembly and of association). [↑](#footnote-ref-26)
27. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para. 1.2 [↑](#footnote-ref-27)
28. 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. 10; and Guidelines on Freedom of Association and Assembly in Africa, 2017 : Definitions, para. 3 [↑](#footnote-ref-28)
29. ECtHR, *Cengiz v Turkey* (1 December 2015) par. 52, also citing *Delfi v Estonia* (16 June 2015), para. 110 [↑](#footnote-ref-29)
30. U.S. Supreme Court, *Packingham v North Carolina*, 2017, Opinion of the Court, b) [↑](#footnote-ref-30)
31. U.S. Court of Appeal for the Fourth Circuit, *Davison v. Randall*, 2019, pp. 21-30; and U.S. District Court for the Southern District of New York, *Knight Institute v Trump*, 2018, p. 2 [↑](#footnote-ref-31)
32. UN Human Rights Council Resolution 2016 (A/HRC/32/L.20), p. 2 [↑](#footnote-ref-32)
33. UN Human Rights Council Resolution (A/HRC/38/L.16) on the promotion and protection of human rights in the context of peaceful protests, para. 9 [↑](#footnote-ref-33)
34. ##  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. 75 ; UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression(A/HRC/17/27), par. 31 and 69; Communication No. 2441/2014, *Zhagiparov v Kazakhastan* (CCPR/C/124/D/2441/2014), 25 October 2018, paras 13.2 and 13.5 (journalist who had published articles on a website inviting its readers to attend a rally to protest against working conditions, leading to a three-month suspension of the website for inviting readers to commit an administrative violation); List of issues in relation to the seventh periodic report of the Russian Federation (CCPR/C/RUS/Q/7), 19 August 2014, par. 23 (d) (Fed Law 398-FZ, on blocking of websites calling for participation in public events held in violation of established order)

 [↑](#footnote-ref-34)
35. Communication No. 1838/2008, *Tulzhenkova v Belarus* (CCPR/C/103/D/1838/2008), 26 October 2011, para. 9.3 (the author was distributing leaflets with information about an upcoming peaceful gathering for which she did not yet have permission) [↑](#footnote-ref-35)
36. Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association (A/HRC/38/34), 26 July 2018, para. 84 [↑](#footnote-ref-36)
37. E.g.: mining data software “Carbon”, currently being developed by University of South Australia researchers, which mines data from Twitter, Facebook and other online social media platforms, marking the use of keywords/phrases, identifying patterns and alerting users about potentially upcoming protests, unrests, civil and industrial actions: http://w3.unisa.edu.au/unisanews/2018/March/feature.asp [↑](#footnote-ref-37)
38. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para 100, 102 [↑](#footnote-ref-38)
39. ECtHR case law: *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), para. 97; *Association of Citizens Radko & Paunkovski v. The Former Yugoslav Republic of Macedonia* (2009), para.76 [↑](#footnote-ref-39)
40. 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 19 [↑](#footnote-ref-40)
41. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), Chapter 2 General Principles; also see “Ten Basic Human Rights Standards for Law Enforcement Oficials” adopted by Amnesty International also provide that exceptional circumstances, such as a state of emergency or any other public emergency, cannot be used to justify any departure from these standards. AI Index: POL 30/04/98 [↑](#footnote-ref-41)
42. 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 22 [↑](#footnote-ref-42)
43. UN Doc. A/61/312, paras.57-60 [↑](#footnote-ref-43)
44. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para. 32 [↑](#footnote-ref-44)
45. See Michael Hamilton, *General Comment 37 on article 21 ICCPR (The Right to Freedom of Peaceful Assembly)*, ECNL/ICNL/UEA, February 2019, pp.23-24 (and corresponding references in endnotes 237-245;.); [↑](#footnote-ref-45)
46. *Ibid* [↑](#footnote-ref-46)
47. *Ibid* [↑](#footnote-ref-47)
48. Communication No. 574/1994, *Keun-Tae Kim v Republic of Korea* (CCPR/C/64/D/574/1994), Views adopted 3 November 1998, paras 12.3, 12.5; [↑](#footnote-ref-48)
49. See Michael Hamilton, *General Comment 37 on article 21 ICCPR (The Right to Freedom of Peaceful Assembly)*, ECNL/ICNL/UEA, February 2019, pp.23-24 (and corresponding references in endnotes 237-245 [↑](#footnote-ref-49)
50. UPR Azerbaijan, 2013: ‘Higher penalties for organisers and participants in “unauthorised” gatherings’ [↑](#footnote-ref-50)
51. 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. 32, OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para. 20, ECtHR case law: Kuznetsov v. Russia, application No. 10877/04, 23 October 2008, para. 44, Inter-American Commission on Human Rights, Report on Citizen Security and Human Rights, para. 197. [↑](#footnote-ref-51)
52. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para. 159, 160 [↑](#footnote-ref-52)
53. Joint Committee on Human Rights, paras.28-29 [↑](#footnote-ref-53)
54. Working group on protecting human rights while countering terrorism, Basic Human Rights Reference Guide: The Stopping and Searching of Persons (September 2010) [↑](#footnote-ref-54)
55. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para. 154 [↑](#footnote-ref-55)
56. 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. 49 [↑](#footnote-ref-56)
57. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para. 161 [↑](#footnote-ref-57)
58. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para. 197 [↑](#footnote-ref-58)
59. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), paras. 5.9, 199, 203 [↑](#footnote-ref-59)
60. ECtHR, *Kalikh and Demyanenko v Russia* (App nos. 72058/17 and 77503/17, Communicated on 15 October 2018), whose applicants are a member of an NGO campaigning for freedom of expression and a photojournalist arrested while they were participating in a public rally as observers rather than demonstrators, kept in detention and sentenced to fines under the norms regulating non-compliance with or resistance to a lawful order by a public official). [↑](#footnote-ref-60)
61. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para 168, which however only refers to non-participant third party individuals or groups [↑](#footnote-ref-61)
62. Helen Fenwick and Michael Hamilton, ‘Freedom of Protest and Assembly’, Chapter 9 in Helen Fenwick, *Fenwick on Civil Liberties and Human Rights* (5th edition) (Routledge-Cavendish: 2017) at p. 560. [↑](#footnote-ref-62)
63. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2016, para. 75 [↑](#footnote-ref-63)
64. Jessica L. Beyer, *Expect Us: Online Communities and Political Mobilization,* OUP: 2014 [↑](#footnote-ref-64)
65. UN Human Rights Council Resolution 2016 (A/HRC/RES/32/13), p. 2 [↑](#footnote-ref-65)
66. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2016, para. 76 [↑](#footnote-ref-66)
67. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association Report, 2016, para. 74; OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para. 169; Human Rights Committee, Concluding observations on the second report of Namibia (CCPR/C/NAM/CO/2), 22 April 2016, paras 37, 38; Human Rights Committee, Concluding observations on the initial report of South Africa (CCPR/C/ZAF/1), 23 March 2016, paras 42, 43 [↑](#footnote-ref-67)
68. See AI software presented at IEEE International Conference on Computer Vision Workshops (ICCVW) 2017 that uses deep learning to enhance facial recognition capabilities and identify people even when certain physical features are obscured: https://arxiv.org/abs/1708.09317 [↑](#footnote-ref-68)
69. Human Rights Committee, General Comment 34 (2011), para. 4 [↑](#footnote-ref-69)
70. Communication No. 1478/2006, *Kungurov v Uzbekistan* (CCPR/C/102/D/1478/2006), para 3.17 (author’s submission that “some communication efforts are much more effective, and much more correspond to the rightful wishes of the communicators, when they are done as a group rather than individually”) [↑](#footnote-ref-70)
71. ECtHR, *Kudrevičius and Others v Lithuania*, Application No 375553/05, 15 October 2015 (GC), para 85 [↑](#footnote-ref-71)
72. Michael Hamilton, General Comment 37 on article 21 ICCPR (The Right to Freedom of Peaceful Assembly), ECNL/ICNL/UEA, February 2019, p. 7 [↑](#footnote-ref-72)
73. OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2d ed. 2010), para 105 [↑](#footnote-ref-73)