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# **Human Rights Committee Draft General Comment No. 37 on article 21 of the International Covenant on Civil and Political Rights, on the right to peaceful assembly**

## Comments of ARTICLE 19

1. ARTICLE 19 welcomes the opportunity to provide the Human Rights Committee (the Committee) with the following observations and proposals on the revised draft General Comment No. 37 on article 21 (the draft) of the International Covenant on Civil and Political Rights (the Covenant), on the right to peaceful assembly, ahead of its second reading.
2. Our submissions draw on ARTICLE 19’s experience and expertise advocating to protect the rights to freedom of expression and freedom of peaceful assembly and association. This includes policy work, culminating in our principle policy position in this field, “The Right to Protest: Principles on the Protection of Human Rights in Protests” (the Protest Principles),[[1]](#footnote-1) legal analyses of laws related to the right of peaceful assembly, support to progressive jurisprudence at national and regional levels, and work with human rights defenders and grassroots organisations involved in peaceful assemblies.
3. These observations supplement ARTICLE 19’s submissions to the Committee, ahead of the half day of general discussion in March 2019.[[2]](#footnote-2) We are pleased to see that many of the priorities we highlighted in those submissions have been reflected in the present draft.
4. Our additional observations are structured as follows:
5. Value of peaceful assemblies
6. Scope of the right
7. Obligations of States Parties
8. Restrictions
9. Where ARTICLE 19 has not commented on a particular issue or paragraph, please refer to the views expressed on those topics in our original submissions, in particular in the areas of use of force and notification procedures.
10. **Value of peaceful assemblies**
    1. *Framing the inherent and instrumental value of assemblies*
11. ARTICLE 19 considers that the draft could more strongly emphasise the inherent, alongside the instrumental, value of peaceful assemblies. The first two sentences of **Para. 1** could be elaborated on in this regard, and form their own paragraph.
12. The draft’s framing of the instrumental value of certain assemblies, may be interpreted to reduce the value of assemblies that have less instrumental significance, and also create a tension with the Committee’s emphasis that States’ responses to all assemblies should be “content neutral” (**paras 25, 30, 54, 61**). The Committee should refrain from inadvertently ascribing differential value, legitimacy, or utility to peaceful assemblies according to their purpose, in particular whether they raise grievances, aspirational goals, or other ideas. This is important to ensuring that the Committee does not unintentionally narrow the scope of the right, or contradict the presumption in favour of its exercise, regardless of the perceived ‘legitimacy’ of its objectives.
13. At the same time, it is appropriate for the General Remarks to recognise that assemblies on issues that do not meet government approval face disproportionate interference from authorities, and those restrictions therefore merit increased scrutiny. The recognition in **para 2** that assemblies have particular value to marginalized and disenfranchised members of society is especially important in this regard, given that for many of these groups peaceful assembly may be the only way to make their voices heard and effect change.
14. **Recommendations**:

* Para. 1 should put more weight on the inherent value of the right of peaceful assembly.
* Para. 1 should more clearly emphasise that the right of peaceful assembly may be exercised to air ideas or demands *of all kinds*, including, *for example*, grievances and aspirational goals, and that *all forms* of peaceful assembly provide opportunities and benefits to democratic societies.
* Para. 1 should avoid framing peaceful assemblies as attempting to seek change “through persuasion, rather than force”. Some tactics of peaceful assembly, such as direct action, may be considered “forceful” while also remaining “non-violent” and enabling the peaceful resolution of differences.
  1. *Stronger articulation of State obligations*

1. Several principles articulated within the General Remarks of Section 1, as well as the General Comment as a whole, could more strongly affirm norms as obligations on the State, rather than as observations of the Committee. We see value in the approach to General Remarks in General Comment No. 34, where state obligations are made clear at the outset, in particular at paragraphs 7 and 8.[[3]](#footnote-3) While avoiding duplication with Section 3 of the draft on “obligations of States parties”, general principles could be adapted to the specifics of Article 21, and more strongly articulated as obligations. For example, rather than describe peaceful assembly as a legitimate use of [public] space, the draft could explicitly call on States to recognize this principle in law and practice.
2. **Recommendation**

* Para. 2 could articulate that States have a positive obligation to recognize the right of peaceful assemblies, and that article 21 protects the use of public and private space to exercise the right.
* Section 1 on General Remarks, or Section 3, should incorporate and adapt for Article 21 language on State obligations from paragraphs 7 and 8 of General Comment No. 34.

1. **Scope of the right**
2. *Structure*
3. For greater clarity and to avoid repetition, many observations in Section 1 on General Remarks address the scope, and could be moved to and merged with relevant paragraphs in Section 2, or, where they are repetitive, deleted. In particular, **paras 4 – 7**, and **10 – 11**, make observations on issues addressed more comprehensively, often using slightly different terminology, later in the draft. This might lead to selective quoting of the draft, as well as unintended confusion on interpretation.
4. In particular, **para. 11** addresses a wide range of disconnected issues in a mostly descriptive fashion that does not aid understanding of applicable norms. With the exception of the valuable implication that the Covenant be interpreted as a living instrument, the remainder of the paragraph may confuse readers.
5. **Recommendation:**

* Remove paras 4 – 7, and 10, from Section 1 on General Remarks, and integrate them to Section 2 on the issue of Scope, and delete Para. 11 entirely.

1. *“Participation” vs. “Exercise of the right of peaceful assembly”*
2. The language of “participate” (**paras. 2, 73, 78, 94, 111, 112**) “participation” (**paras. 12, 22, 40, 42, 72, 77, 81, 105**) and “participants” (**extensive**), is sometimes used interchangeably with references to persons “exercising the right to freedom of peaceful assembly”. **Para. 12** specifically uses the concept of “participation” to determine whether the right of freedom of peaceful assembly is engaged.
3. Absent a definition of “participation” and related terms, their use may lead to a restrictive reading of certain norms to exclude their application to actors who are not strictly “participants”. This includes organizers of assemblies and others engaged in preparatory acts who do not subsequently participate, as well as onlookers, observers, journalists and human rights monitors, who may seek to distinguish themselves as non-participants whose conduct nevertheless engages the right.
4. While **paras 34** and **38** (and to a certain extent, para. 85), on associated activities and actors, makes clear that Article 21 is often engaged by non-participants, the exclusive use of language of “participation” elsewhere in the text may undermine that protection. Paragraph 34 should be clear that while these actors should be distinguished from “participants”, they may nevertheless be engaged in conduct that engages Article 21 of the Covenant (alongside other rights, such as Article 19).
5. **Recommendation:**

* Review and where necessary replace language of “participants” or “participation”, in particular in Para. 12, to avoid restrictive readings of the scope of Article 21 of the ICCPR.
* Paragraph 34 should specify that journalists, human rights defenders and independent monitors observing or reporting on assemblies engage Article 21.

1. *Online peaceful assembly*
2. In the digital age, when offline and online protests are increasingly creative, the scope of the right of peaceful assembly should not be unnecessarily tethered to limited understandings of physical, public space, such as in the second sentence of **Para. 13**.
3. The Committee should additionally recognise, in line with recent observations of the Human Rights Council in resolution 38/11, that the right of peaceful assembly may be exercised online, and/or through the use of digital and information and communications technologies.[[4]](#footnote-4) **Para. 15** appears to be a missed opportunity in this regard, ambiguously stating that “comparable human rights protections” may apply in this space, rather than clearly stating the possibility that those protections could originate from Article 21 of the Covenant.
4. The illustrative list of various forms of assemblies in **Para. 6** is helpful, but should specifically recognize that peaceful assemblies, in addition to taking place outdoors or indoors, can take place “online, and through the use of digital and information and communication technologies.” This would be much clearer than the descriptions in **Para. 11**, which do not articulate a clear norm. The nature of assemblies, including the potential for assemblies that take place online, or through the use of technologies, would be addressed more coherently as a matter of scope within Section 2 of the draft.
5. Within Section 3, **para. 38** should be clearer on the application of international human rights law to the digital age, and in particular to Article 21 of the Covenant. We question the utility of the terminology of “associated activities” in this paragraph, as use of information communication technologies is in many contexts *integral* to the exercise of the right, which may, indeed, depend on the use of such technologies.
6. Moreover, in **para. 38** the Committee should articulate a principle that it is *never* a proportionate response to an assembly, whether peaceful or after violence occurs, to block or otherwise reduce Internet connectivity. The term “unduly” should be deleted, in favour of articulating a more positively framed obligation for States to ensure sustained internet connectivity ahead of, during and following assemblies, including where the is violence, and taking no action adverse to this.[[5]](#footnote-5) Language on “hindering” connectivity could specifically reference “whole or partial network shutdowns as well as measures to throttle connectivity”, in order to be comprehensive. Other forms of interference, including content-based blocking or filtering (distinct from targeting connectivity), should similarly be condemned as potential violations of the right of peaceful assembly.[[6]](#footnote-6) In particular, content filtering systems imposed by governments are, as a form of prior censorship, never justified under international human rights law.[[7]](#footnote-7)
7. In relation to assemblies, the Committee should make clear in **para. 38** that measures to interfere with connectivity can frustrate the organization of assemblies (including outreach and engagement to potential participants), limit the ability of participants to communicate their messages more broadly online, and also prevent the free flow of information about human rights violations and abuses against peaceful assembly, and thereby directly engage Article 21. The Committee must interrogate and not reinforce any assumption that blocking or reducing connectivity during times of unrest is effective as a harm reduction measure, and emphasise the broader human rights violations or abuses that may flow from reducing individuals’ access to information at such times.[[8]](#footnote-8) This would be strengthened, and consistent with our suggestions on earlier paragraphs, if such measures *additionally* had to be justified under Article 21 of the Covenant, and not only as a matter of freedom of expression.
8. In **para. 38**, the draft should make clearer reference to the responsibilities of private actors, and recognize a broader range of actors whose responsibilities may be engaged in relation to Article 21 of the Covenant, and specifically reference the Ruggie Principles in this regard (as per **para 35**). The language of “internet service providers” is under-inclusive, and should be expanded to include the full range of digital access providers, including telecommunications and internet service providers, internet exchange points, content delivery networks, and network equipment vendors.[[9]](#footnote-9)
9. The draft makes confused references in **para. 38** to obligations of States relating to the “self-regulation” by companies. Calling for the State to “ensure” (interfere with) self-regulatory initiatives would mean those initiatives cease to be truly self-regulatory; the Committee should revisit what is intended from this clause. An important aspect to address is States’ delegation of regulatory functions to private actors, in particular through opaque forms of pressure for private actors to censor user-generated content on their platforms against international human rights standards, often by reference to platforms’ terms of service, and without transparency or due process.[[10]](#footnote-10) The Committee should stress the importance of companies bringing their terms of service in line with international human rights standards, including on the right of peaceful assembly, and also urge States to avoiding models of regulation whether administrative (rather than judicial) agencies determine content decisions.[[11]](#footnote-11)
10. In **para. 38**, the Committee should make clear that the responsibilities of private actors are to respect the human rights of persons engaged in peaceful assemblies, including the human right to privacy, and other human rights. Ambiguous references to “unduly affect assemblies” (rather than “the right of peaceful assembly”) as well as to “safety” should be avoided for sake of clarity, and replaced with rights-based language.
11. While welcoming references to the right to privacy (in particular to interception of communications in **para. 71**, and supportive references in **paras 38**, **70**, **72**, and **112**), we are disappointed that the Committee does not address the issue of secure communication tools such as encryption in the drat General Comment. Building on these existing reference, the Committee should recognize the importance of encryption tools to peaceful assembly, as the Human Rights Council has,[[12]](#footnote-12) and repeat their call on States “not to interfere with the use of such technical solutions.”[[13]](#footnote-13) The UN Special Rapporteur has called on States to protect encryption and anonymity tools in law and policy, making clear that bans on their use are incompatible with international human rights law, and that limitations must be justified according to the test of legality, legitimate aim, and necessity and proportionality.[[14]](#footnote-14) The Committee should consider the particular importance of encryption and anonymity tools for individuals and groups that face discrimination, as well as those operating in environments where organising or engaging in peaceful assemblies carries with it risks of surveillance by the government or private actors.[[15]](#footnote-15) This would build upon the Committee’s existing references to the utility of masks to assembly participants (**para 70**).
12. We are further disappointed that the Committee does not more directly address abuses and violations of the right to privacy through the use, by State authorities or private actors, of privately developed surveillance technologies (**para. 71**). The severity of violations in this sector has led to the Special Rapporteur on freedom of opinion and expression calling for an immediate moratorium on the export, sale, transfer, use or serving of privately developed surveillance tools until a human rights-compliant safeguards regime is in place.[[16]](#footnote-16) We strongly urge the Committee to integrate the Special Rapporteur’s recommendation for States that purchase or use surveillance technologies to “ensure that domestic laws permit their use only in accordance with the human rights standards of legality, necessity and legitimacy of objectives, and establish legal mechanisms of redress consistent with their obligation to provide victims of surveillance-related abuses with an effective remedy.”[[17]](#footnote-17)
13. **Recommendations:**

* Integrate descriptions of the variety of forms assemblies in **Para. 6** within Section 2 on “scope”;
* Delete the second sentence of **Para. 13**, which limits the scope of the right of peaceful assembly by reference to physical “property”;
* Specifically recognize that peaceful assemblies may take place entirely online or through the use of digital and information and communication technologies, extending **Para. 6**, potentially by merging it with aspects of **Para. 11**, and by amending **Para. 15**;
* In **para. 38** recognize that the use of technologies is, in many cases, integral to and essential for the exercise of the right of peaceful assembly.
* In **para. 38,** reflect the principle that States must maintain internet connectivity ahead of, during, and after assemblies, even where there is violence, and no public order or national security arguments justify limiting connectivity, and thus Internet shutdowns violate Articles 21 and 19 of the Covenant.
* In **para. 38**, refer generally to “digital access providers”, including telecommunications and internet service providers, internet exchange points, content delivery networks, and network equipment vendors.
* In **para. 38**, clarify references to “self-regulation” by private actors, and call on private actors to ensure any practices around content moderation comply with their responsibilities under international human rights law;
* In **para. 38**, replace reference to “safety of assembly participants” with references to individuals’ human rights, including the right to privacy.
* In **para. 38** or **para. 71**, make clear the obligation of States to protect, and not interfere with, strong standards for encryption.
* Address within the General Comment, in **para. 71** or elsewhere, violations of the right to privacy through the use of privately developed surveillance technologies.

1. *“Public” or “publicly accessible” spaces and private property interests*
2. ARTICLE 19 does not see a compelling reason to limit the scope of the right to peaceful assembly only to gatherings in “public” or “publicly accessible” spaces (**paras 2, 4, 11, 13, 64**). To the extent that exercise of the right to freedom of peaceful assembly infringes upon the private property interests of others, this can be addressed within Section 4 on limitations.
3. Removal of the public-private distinction from the above paragraphs would maximize the scope of Article 21, and be consistent with the overriding approach and logic of the draft, in particular the presumption in favour of the right (**para. 19**), and against restrictions (**para. 40**). Alternatively, rather than deleting the references to public space entirely, references to private space should be added. For example, **Para. 2** should recognize that peaceful assemblies are a protected use of public *and* private space.
4. In support of this approach, we recall that the text of Article 21 ICCPR does not reference or distinguish between spaces that are privately or publicly owned, or imply the necessity of physical presence of individuals together in one place. It further supports the strong articulation the draft gives to the right of persons to choose the location of their assembly (**para. 65**), within “sight and sound” of the intended target (**paras 25, 30, 61**). Such an approach also ensures that Article 21 may be engaged by conduct away from an assembly, such as preparatory meetings, or remote observation or monitoring of assemblies, which might take place in private spaces.
5. Addressing potential conflicts between the right of peaceful assembly and private property interests within Section 4 is consistent with **para. 67**, which foresees circumstances where property interests may be subjugated to the right of peaceful assembly.[[18]](#footnote-18) This is in tension with the last sentence of **para. 64,** which may imply that property interests (i.e. asserted through restrictions on public access) are absolute; it should be deleted.
6. The justification for assembly rights existing on private property without the consent of the owner remains compelling, as a matter of scope, no matter how practically “accessible” the privately owned space is or should be. More determinative, for the question of limitations, might be if the private space serves a public function, or if the private space is the only or best venue within sight and sound of an assembly’s intended audience.
7. Recognizing the broad applicability of Article 21 in privately-owned space is essential if the draft is to be updated to address the use of strategic lawsuits against public participation (SLAPPs), which are often used against assemblies that infringe (or are alleged to infringe) individuals’ property interests (e.g. through acts of trespass). It is also essential towards enabling peaceful assemblies to take place where the ownership of land is contested, such as in the case of indigenous territories. It is also important to recognising any online dimension of this right, as the operation of the internet depends upon platforms and a communications infrastructure that are largely privately owned.[[19]](#footnote-19)
8. UN special procedures have raised concerns at the use of civil law actions, in particular Strategic Lawsuits Against Public Participation” (SLAPPs) to frustrate the exercise of the right of peaceful assembly, in particular against protests taking the form of direct action.[[20]](#footnote-20) Such suits are based on civil claims such as nuisance, trespass, interference with contract and/or economic advantage, usually to intimidate activists with claims for large damages, or for the purpose of seeking injunctions to prevent future protests. Even where unsuccessful, the costs associated with defending against such suits is prohibitive, and has a significant chilling effect on the right of peaceful assembly. Importantly, the UN Human Rights Council has called upon States “to avoid the abuse of […] civil proceedings, or threats of such acts at all times”, as part of the responsibility to protect human rights and prevent human rights violations and abuses.[[21]](#footnote-21) General Comment No. 37 must build upon this to call on States to restrict the possibility of civil law remedies being used to silence protesters and to obstruct the work of human rights defenders in protests, including strategic litigation against public participation (SLAPP). Furthermore, States should adopt legislation that considers SLAPP as an abuse of the judicial process which aims to restrict the legitimate exercise of the right to protest.[[22]](#footnote-22)
9. **Recommendation:**

* Expressly recognise that the right to peaceful assembly may be exercised in *any* location whether that space is public, private, or functionally public (i.e. privately owned, but functionally public), online or offline, and delete all references to the public-private distinction that undermine that interpretation.
* Address the abuse of SLAPPs to frustrate the exercise of peaceful assembly.

1. *“Peaceful” assemblies and “violence”*
2. It is welcome that the draft recognizes that assemblies may be peaceful even where they cause extensive disruption (**paras 7, 17**).
3. However, **para. 7** may be read to equate peaceful assemblies that are “somehow contentious” (by reference to their content, or purpose) as disproportionately causing greater levels of disruption. We advise that the terms “contentious” or “controversial” be deleted, as they imply a value judgment on the content of assemblies. Rather, the draft should recognize more clearly than it does currently that, as with the right to freedom of expression, the right to peaceful assembly includes the right to annoy or offend people who are opposed to the ideas or claims that an assembly is seeking to promote (i.e. beyond the annoyance caused by disruptions associated with assemblies).[[23]](#footnote-23) This should also be addressed in **para. 31**, where the draft anticipates assemblies “provoking” violent reactions, though does not robustly defend the right to engage in “provocative” expression that certain parts of population may find offensive or disturbing (see also, **paras 58 – 59**), per General Comment No. 34. The draft should be clear in **paras 7, 31, 58 and 59,** that the participants in an assembly should not be held accountable for violent reactions or retaliation by others.
4. The further elaboration in **para 17** that the “mere disruption of vehicular or pedestrian movement or daily activities does not amount to violence” is helpful. However, both **para 7** and **para 17** would be strengthened if they specifically recognized that assemblies are protected where they *intentionally* cause disruption, noting that such disruption may be integral to the expressive purpose of the assembly, and may be of *sustained duration.*
5. This could more expressly be linked to the concepts of non-violent civil disobedience and direct action (**para 18**), where these concepts are referenced but not elaborated upon. The Committee should consider emphasizing that for these forms of assembly, their expressive purpose might require organizers to legitimately opt not to comply with certain regulatory processes (e.g. of notification, where this would defeat the expressive purpose of a peaceful assembly causing disruption). Protection for such conduct is implied in the recognition **para 16** gives to spontaneous assemblies. However, the drafting still appears to express preference for assemblies organised in advance and notified to authorities. This is unnecessary, and we advise that issues of notification are addressed more neutrally in Section 5.
6. We broadly agree with the draft’s approach to the meaning of “violence”. However, coherence of key principles would be enhanced if references to “violence” in General Remarks (**para. 10**, first sentence) are deleted, in favour of the clearer way this issue is addressed in Section 2 on scope (**paras. 17** **and** **19 – 21)**.
7. To ensure the broadest scope for article 21 protection, we support the inclusion of the term “widespread and serious” in **para 19**, to emphasise that limited or isolated instances of violence do not result in an assembly losing protection.
8. The draft could more clearly distinguish assemblies that never fall within the scope of Article 21, because widespread and serious violence is clearly intended, planned, or imminent, versus peaceful assemblies that initially enjoy Article 21 protection, but then lose this protection once widespread and serious violence occurs. There are some tensions between **paras 19** and **21** in this respect.
9. It is welcome that the General Comment notes that violence in assemblies may be initiated by law enforcement authorities, or agents acting on their behalf. However, **para. 20** could be more specific in condemning such State action as a human rights violation. The observations of **para. 103**, on *agents provocateurs*, might also be helpful to integrate to **para. 20**. Similarly, it is positive the General Comment recognizes the obligation on the State to protect assemblies from hostile responses (**para. 31**, **58**, **59**).
10. Related to this, **para. 23** could expressly recognize that the use of protective clothing, gas masks, shields, helmets and googles, carried for the purpose of ensuring individuals’ safety in a peaceful assembly, including against the potential use of excessive force by authorities, should not be interpreted as intent to engage in violence. The use of facial coverings to protect individuals’ anonymity or pseudonymity (addressed in **para. 70**) would also be relevant to address as a presumptively peaceful act.
11. **Recommendations:**

* Avoid subjective language and value judgments on the nature of certain peaceful assemblies, whether in relation to their content or manner, deleting the terms “contentious” and “controversial” from **para. 7**, and ensure that assemblies enjoy protection not only where they are disruptive, but where they are *intentionally disruptive*, and where *disruption is of a sustained duration* (**paras 7 and 17**)*.*
* **Para 7** and **para 31** should make clear that the right of peaceful assembly includes the right to offend and disturb, including where this may provoke a violent reaction, and that responsibilities for those reactions should not be attributed to those exercising their right to peaceful assembly.
* Supplement **para. 17** to make clear that assemblies that include messages that are offensive also enjoy protection, as per Article 19 of the Covenant.
* Remove from **para. 16** references to notification procedures, simply stating clearly the positive obligation on States to recognize and protect spontaneous peaceful assemblies.
* For coherence and to allow for a more detailed explanation later, delete references to violence in **para. 10**.
* Clarify the nature of civil disobedience and direct action, including protection for potentially unlawful conduct, in **para. 18**.
* Be more specific in condemning as a human rights violation State practices of initiating violence against assemblies that are peaceful (**para. 20**), in particular through the use of *agents provocateurs* (**para.** **103**)
* Clarify that the use of equipment for self-protection against unnecessary or excessive violence by law enforcement, and of masks to protect individuals’ anonymity, is not evidence of intent to engage in violence (**paras 20, 23** and **70**).

1. *Legitimate exercise of rights*
2. At various points, the draft references the “legitimate” exercise of the right to peaceful assembly. We consider this language to cause confusion in relation to the scope of the right, as it implies that there are “illegitimate” ways to exercise the right (rather than certain conduct merely not engaging the right at all). See, for example: **para. 2** (on “legitimate” use of public space); **para. 27** (on “legitimate objectives” of participants); **para. 60** (on “legitimate” forms of expression). This has the potential to cause confusion, in particular since language on “legitimacy” is also used in relation to evaluating the compatibility with the Covenant of restrictions imposed by the State. Similarly, the use of the term “interference” in **para. 27** to refer to the conduct of non-State actors might cause confusion.
3. Recommendation:

* The draft should avoid use of the term “legitimate” in relation to exercising the right of peaceful assembly, and use it exclusively to describe the legitimacy of restrictions imposed on exercise of the right.

1. *Advocacy of hatred constituting incitement*
2. In relation to **para. 22**, we recommend that the Committee avoid references to States’ obligations under Article 20 of the Covenant, and instead address this relationship in Section 4 on limitations. This is because Article 20 of the Covenant addresses the content of expression (whether individual or collective), and the threshold at which it incites harmful action (hostility, violence, discrimination) from others. This is a different determination than assessing whether the assembly itself is characterised by violence or not.
3. To take this approach would be consistent with General Comment No. 34, where it is clear that any prohibitions pursuant to Article 20 of the Covenant must still comply with the requirements on limitation in Article 19(3).[[24]](#footnote-24) It would further require the deletion of the final sentence of **para. 60**, as it assumes Article 20 of the Covenant determines the scope of Article 21 protection, rather than simply prescribing a form of limitation that must also be compatible with the conditions of Article 21.
4. The same approach also requires revision to **para. 57** of the draft. We do not see a compelling reason for interpreting Article 20(2) of the ICCPR to *require additional prohibitions on collective acts of expression*. **Para. 57** should be clearer that individual accountability is required to sanction any person for incitement, and therefore delete “as far as possible”, also clarifying what “action” from States is legitimate, underscoring that it must comply with the Covenant. As guidance, the draft could reference the Rabat Plan of Action, and the standard of specific intent that is advances. It should make clear that for the purpose of criminal, civil or administrative liability under any national law implementing Article 20 of the ICCPR, individual culpability is essential for any sanctions imposed to be compatible with the Covenant.
5. We also invite the Committee to reconsider the position that any flag or symbol can be considered “intrinsically” or “exclusively” associated with the advocacy of discriminatory hatred constituting incitement to hostility, discrimination or violence (**para. 60**). While the use of symbols will often be an intentional act of intimidation or harassment (themselves different legal concepts than incitement, and not directly addressed by Article 20 of the ICCPR), or an act of incitement to hostility, discrimination or violence (per Article 20), this determination is better reached following a case-by-case assessment, evaluating intent, as well as likelihood of harm.[[25]](#footnote-25) As drafted, **para. 60** appears to support the possibility of blanket prohibitions on the use of certain symbols, based only on the content of the expression. In our view, this is inconsistent with the Committee’s approach to General Comment No. 34, and with international standards on freedom of expression.
6. Several factors favour a case-by-case approach. In particular, it is important that such prohibitions do not capture expression that is not intended to incite hostility, discrimination or violence, or engage in acts of discriminatory harassment or intimidation. This may include instances where individuals employ symbols in their assembly as a form of satire or art (in particular to attack rather than support ideologies associated with those symbols), or where they directly use symbols to protest perceived associations between current power-holders and ideologies or behaviour associated with the symbol.
7. For example, a blanket prohibition on the Swastika prevents their use in assemblies by Neo-Nazis to intimidate residents in a neighbourhood, and the application of a prohibition in these circumstances may be compliant with Article 21. However, a blanket prohibition would also prevent use of the same symbol by those protesting against a government perceived as having fascist policies.
8. Laws and regulations must be narrowly tailored to allow for the variety of creative means for which symbols can be used. This would be consistent with the approach of the Committee in General Comment No. 34, where general prohibitions on “blasphemy” and “historical memory laws” are condemned, unless in the individual circumstances where they can be justified in accordance with Article 19(3) or Article 20 of the ICCPR.[[26]](#footnote-26)
9. **Recommendations:**

* Delete **para. 22**, and the final sentence of **para. 60**, and address issues relating to Article 20 of the Covenant in Section 4 on limitations.
* Revise **para. 57** to make clear that “incitement” requires specific intent, per the Rabat Plan of Action, which can only be assessed individually.
* Revise **para. 60** to make clear that prohibitions on specific symbols or images are only proportionate if the individual(s) are using those symbols to advocate [discriminatory] hatred constituting incitement to discrimination, hostility or violence.
* Treat the advocacy of [discriminatory] hatred inciting hostility, discrimination or violence distinctly from assemblies that are directly threatening or harassing persons based on protected characteristics (i.e. incitement and intimidation are different concepts, the latter not necessarily engaging Article 20(2) of the ICCPR, but being legitimate to restrict under Articles 19 and/or 21 of the ICCPR).

1. *Non-discrimination*
2. **Para. 5** articulates, under the heading “General Remarks”, that “everyone” enjoys the right of peaceful assemblies. However, it employs an illustrative list focused on children and categories of non-citizens, that seems both under-inclusive and repetitive of the more extensive grounds of non-discrimination recognised in **para. 28**.
3. While this issue is important to elevate in the text, it may be more coherent to address the issue only once, ensuring one fully inclusive list of protected characteristics, either in **para. 28**, or as a question of scope in Section 2. At the same time, we note that the concluding sentence of **para. 28** is also under-inclusive of the State’s duty to protect participants from *any discriminatory abuses or violations of their rights*, including but not limited to those that are homophobic, sexual, or gender-based. This would be further strengthened if it referred to the multiple and intersecting forms of discrimination certain individuals or groups may face, and more clearly articulate the positive obligations the State has to ensure the right for all people equally.
4. **Para. 28** should also directly address discriminatory human rights violations committed by law enforcement authorities (through act or omission), for example, gender-based violence committed in the context of the use of force, including to arrest and detain persons exercising their right to peaceful assembly.
5. In relation to the concept of “incitement” (addressed in **paras. 22, 57** and **60**), the Committee should encourage States to interpret expansively the protected characteristics listed in Article 20(2) of the ICCPR. Assemblies that advocate hatred based on grounds other than race, nationality and religion, for example assemblies advocating hatred based on sexual orientation, gender or disability, should also engage similar obligations for States.[[27]](#footnote-27)
6. **Recommendations**

* Recognize the broad application of the right of peaceful assembly to “everyone” as a matter of scope, in section 2.
* Ensure consistency in the recognition of protected characteristics between Para. 5 and 28, preferring the fullest listing possible, and expand the list of protected characteristics that can engage States obligations under Article 20(2) of the ICCPR.
* Make clear that it is an obligation for the State to refrain from engaging in discriminatory acts against the rights of persons exercising their rights to freedom of peaceful assembly, and not only about protecting individuals from the acts of third parties.

1. **Obligations of States Parties**
2. In relation to Section 3 of the draft, several aspects that intersect with issues of scope have been addressed with above. Many of the following comments are somewhat miscellaneous, but nevertheless are important to tightening the draft.
3. We found **para. 29** of the draft confusing, as we were not sure what “precautionary measures” refers to, and how this relates to limitations, and Section 3 of the draft.
4. The articulation of certain principles within Section 3 of the draft could more clearly be framed as obligations on the State. For example, in **para. 30** on counter-assemblies, rather than say “counter-assemblies should be treated in a content-neutral way”, the draft could more assertively make clear that “States parties must take a content-neutral approach to counter-assemblies…”.
5. In relation to **para. 34**, we strongly recommend that the conduct of journalists, human rights defenders and independent observers, is seen as engaging Article 21 of the ICCPR, potentially in conjunction with other rights, such as Article 19. However, we consider the issue of reprisals for participants in assemblies (penultimate sentence of **para. 34**) is a separate issue, also engaging Article 21, that warrants its own paragraph.
6. In relation to **para. 37,** use of the terminology “event”, rather than “assembly” is confusing, and the paragraph could make clearer that the right under Article 21 may be engaged through preparatory acts leading up to and during an assembly, and may also be engaged afterwards (e.g. by an arrest or reprisal against a person for engaging in an assembly). The Committee may want to make a more forceful point of how States targeting preparatory conduct of assemblies (e.g. to frustrate their organisation, subject organisers to surveillance, pre-emptively arrest participants, or shutdown websites relating to the assembly) are analogous to prior-censorship, and have a severe chilling effect and should be taken particularly seriously.
7. **Recommendations:**

* Clarify the meaning of “precautionary measures” in **para. 29**, and explain their relationship with “restrictions” per Section IV of the draft;
* Avoid descriptions of principle in favour of stronger articulation of the specific State obligations that apply to a particular issue (e.g. in relation to **para. 30**);
* Make clear that the conduct of journalists, human rights defenders, and independent observers in monitoring or reporting on an assembly engages States obligations under Article 21 in respect of those actors (**para. 34**, square-brackets);
* Address the issue of reprisals (harassment or penalty) against participants in assemblies (**para 34**) in a standalone paragraph.
* Replace the term “event” with “assembly” in **para. 37**, and make clearer that Article 21 may be engaged by preparatory acts and conduct, as well as by conduct of the State or rights-holders subsequent to an assembly;
* The Committee should articulate in **para. 37** that prior-restrictions on assemblies are equivalent to prior-censorship and are an egregious violations of the Covenant.

1. **Restrictions on rights**
2. *General principles*
3. Examining **Paras 40 – 55**, there are a number of overarching general principles related to restrictions that the draft could more strongly articulate, including by drawing inspiration from prior General Comments. These include the principles that:

* Restrictions on the right of peaceful assembly may not jeopardise the exercise of the right itself;[[28]](#footnote-28)
* The relationship between the norm and the exception may not be reversed;[[29]](#footnote-29)
* Restrictions may only be applied for the purposes for which they were prescribed, and must be directly related to the specific need on which they are predicated;[[30]](#footnote-30)
* States parties must demonstrate in *specific and individualised fashion* the precise nature of the threat a restriction seeks to meet, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the peaceful assembly and the threat;[[31]](#footnote-31)
* The Committee reserves to itself the ability to assess whether the circumstances justified a restrictions;[[32]](#footnote-32) and,
* The Committee will not make reference to a “margin of appreciation” when assessing States’ restrictions.[[33]](#footnote-33)

1. We advise that **paras. 44 – 46** be reviewed for their consistency with the requirement of legality, necessity and proportionality adopted in prior General Comments. In relation to guidance on “proportionality” (**para. 46**), in particular, we recommend the avoidance of the term “value judgment/assessment”, and the integration of standards from General Comment No. 27 and 34.
2. Other language throughout the draft may be read inconsistently with the conditions set out in Section 4, in particular if these additional elements are added to tighten the draft.
3. **Para. 24**, for example, asserts that “Because the right of peaceful assembly is not absolute, the obligation to respect and ensure the right of peaceful assembly may in some cases be adjusted accordingly.” This appears to be inconsistent with the principle that some aspects of the right (such as the right to an effective remedy) are absolute, and the guidance “*may in some cases be adjusted accordingly*” may be read broadly to give license to limitations that are not consistent with the Covenant. Similarly, **para. 41** appears drafted to encourage proportionate limitations, but terms like “where appropriate, consider intermediate or partial restrictions”, and “it is […] *often preferable*” may be taken out of context to give broad permission to limitations.
4. **Para. 8**, for example, speaks to “unwarranted interference” with the right, and that “restrictions must narrowly be drawn”, and **Para 26** also addresses “unwarranted interference” as well as restrictions “without compelling justification” or “without legitimate cause” (see also **para 94**). This language is significantly less specific than the articulation of principles on restrictions from Para. 40 onwards, and maybe selectively quoted to undermine those standards.
5. At various points, the draft refers to “general” rules or uses the qualifying term “generally”, and then speaks to “exceptions” to those rules (for example, **Para 60** on flags and symbols, **Para. 58** on failure of State to facilitate assemblies against counter-protests, **Para. 70** on “blanket bans” on masks, **Para. 74** on provisions on costs “generally” not being compatible with the Covenant). While this approach might be intended to stress the exceptional nature of limitations, the ambiguity of the terminology may give license to States to define any subjective reason as “exceptional” and therefore as justifying limitations to the right against the “general” rule. In all these cases, the draft needs to review whether the term “generally” is necessary (rather than just straightforwardly stating something as an obligation), and where exceptions are foreseen, make clear what those are, and/or expressly invoke the strict conditions for limitation described in Section 4. We have similar reservations with the use of the term “in principle” (e.g. **Para. 42**), and also references to the potential permissibility of “blanket” restrictions or bans, which by their nature do not allow for an individualised assessment of necessity or proportionality (**Para. 42**).
6. In other parts, for example **Para. 63**, the draft refers to the exercise of the right of peaceful assembly having an “undue” impact on other persons’ rights or interests. For clarity, we recommend that the Committee avoid references to the exercise of a right being “undue”, as per recommendations above with language of “legitimate” exercise of the right.
7. In Para.113, the phrase “participants in peaceful assemblies must not infringe on the rights of others” appears to imply that a peaceful assembly that interferes in any way in the rights of others, *must* be restricted, without regard to the necessity, proportionality, or legality of the restriction. It should be deleted.
8. **Recommendations:**

* Make clearer the exceptional nature of permissible restrictions by tightening the approach to Section 4 of the draft, including by incorporating specific principles from previous General Comments dealing with restrictions (**paras 40 – 55**);
* Avoid references to a “value judgment” in relation to proportionality assessments (**para. 46**)
* Avoid vague references to limitations on human rights (for example **Para. 8**, **24, 26**, **94**), in favour of concrete references to the strict requirements limitations on the right of peaceful assembly must meet;
* Avoid labelling points of principles as “general rules” (or “Generally…”), that are subject to “exceptions”, unless this is tied expressly to the test for limitations, and/or specific and exhaustive examples of exceptions;
* Avoid references to the “undue” exercise of rights, for example in **Para. 63**
* Delete Para. 113 in its entirety.

1. *“Legitimate aims” and content based restrictions*
2. We welcome that the draft proposes narrow definitions for legitimate aims that can justify the imposition of restrictions on peaceful assembly (**Paras. 47** – **53**). However, these thresholds appear in some instances inconsistent with subsequent paragraphs.
3. While “interests of national security” is appropriately narrowly defined in **Para. 48**, there are tensions between this and other parts of Section 4. In particular, **Para. 79** ambiguously States that “terrorism and other similar acts of violence must be criminalised”, implying this is a legal obligation based in international human rights law. There is no universal and comprehensive definition of “terrorism”, and the General Comment is potentially further undermining clarity by connecting this to the broad phrase “other similar acts of violence” (analogous terms such as “extremism” or “violent extremism” should also be avoided). This casually drafted paragraph overlooks serious concerns, expressed throughout the UN system, at the abuse of counter-terrorism and “countering violent extremism” (or “extremism” laws to shrink civic space.[[34]](#footnote-34) We strongly advise that **Para. 79** is revisited, both to connect it more closely to the standards articulated in **Para. 48**, and ensuring consistency with Paragraph 46 of General Comment No. 34.
4. While we broadly welcome the approach taken to defining “public order” in **Para. 50**, this would be strengthened if it reflected that assemblies may be *intentionally* disruptive, including for extended durations, but still not meet the threshold of disorder to allow for limitations to be imposed. As drafted, time-based limitations in the draft provide little protection for assemblies that take place at potentially anti-social times because this is inherent to their purpose, for example candle lit vigils, which can only take place at night, and may extend for multiple nights, or encampments and occupations as specific forms of assembly.
5. As drafted, **Para. 63** may be misinterpreted to allow for limitations on assemblies that occur close to residential neighbourhoods, with terminology of “undue impact on the lives of those who live nearby”, speaking more to concepts of convenience, rather than the high thresholds described in **Paras 47 – 53**, for example concepts of “public order” and “rights of others”.
6. It is similarly disappointing that **Para. 62** says there are “no fixed rules on the duration of assemblies”, when generally applicable principles to restrictions should apply to limitations on duration. Therefore, arbitrary or blanket limitations, such as prohibiting assemblies in hours of darkness or overnight, should be considered a violation of the Covenant unless there are clear reasons why a legitimate interest is engaged to justify such a restriction, and that restriction is necessary and proportionate. **Para. 62** should make much clearer that authorities should not limit the duration of an assembly simply because of a (subjective) assessment that there has been a “sufficient opportunity to effectively manifest” views.
7. In relation to **Para. 52** on “public morality”, the use of the subjective and judgmental term “parochial” should be avoided. Instead, the description of “public morality” in General Comments No. 34 and No. 22 should be more precisely reflected.
8. The final sentence of **Para. 52** is poorly drafted. It should more clearly articulate, as a point of principle, that the sexual orientations and gender identities and expressions of individuals are not subjects of “morality” to be policed by government, but are protected characteristics under Articles 2 and 26 of the Covenant. As drafted, it appears to reinforce the notion that individuals’ identities and the expression of those identities are matters of morality (rather than matters impacting the rights of those individuals). Including other specific examples of unwarranted restrictions premised on so-called “traditional values” or religious beliefs, directed against persons for reasons other than sexual orientation or gender identity, may also help disrupt the impression of an exclusive connection between “public morals” and those particular protected characteristics.
9. For example, elaborating within this section that peaceful assembly cannot be limited merely because an assembly and/or it’s messages are considered offensive to the sentiments of a majority, would be helpful. Incorporating principles from General Comment No. 34 on the incompatibility of prohibitions on blasphemy with Articles 19, and by extension, Article 21, would also be useful.
10. While some principles from General Comment No. 34 on content-based restrictions are incorporated (notably in **Para. 55**) these examples are under-inclusive, and do not make sufficiently clear that the reason such limitations are incompatible with the Covenant is because they *do not pursue a legitimate aim.* While it may be difficult to incorporate all of the standards from General Comment No. 34 on content based restrictions, the Committee should consider the unintended consequences of selectivity and the signals this may send, e.g. by not addressing blasphemy-based limitations, lese-majeste, sedition, or defamation (as distinct from insult). In many contexts where ARTICLE 19 works, these are commonly invoked grounds for limiting peaceful assemblies on the basis of their content, that it is important this General Comment fully and expressly addresses.
11. We have addressed issues around incitement to hostility, discrimination or violence, and the relationship between Articles 20 and 21, above.
12. **Recommendations:**

* Revise Para. 79 in relation to “terrorism” to bring it in line with the high threshold for national security based limitations in Para. 48 and freedom of expression standards from General Comment No. 34.
* Address, in **Para. 55**, a greater variety of content-based restrictions and clarify that they do not pursue a legitimate aim, thereby reinforcing existing standards from the Committee, in particular on blasphemy or defamation of religions, lese-majeste, sedition and defamation.

1. [The Right to Protest Principles](https://www.article19.org/data/files/medialibrary/38581/Right_to_protest_principles_final.pdf), ARTICLE 19, 2016. [↑](#footnote-ref-1)
2. Available on the OHCHR website, [here](https://www.ohchr.org/Documents/HRBodies/CCPR/GC37/ARTICLE19.docx) (word document). [↑](#footnote-ref-2)
3. “7. The obligation to respect freedoms of opinion and expression is binding on every State party as a whole. All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party. Such responsibility may also be incurred by a State party under some circumstances in respect of acts of semi-State entities. The obligation also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities.

   8. States parties are required to ensure that the rights contained in article 19 of the Covenant are given effect to in the domestic law of the State, in a manner consistent with the guidance provided by the Committee in its general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant. It is recalled that States parties should provide the Committee, in accordance with reports submitted pursuant to article 40, with the relevant domestic legal rules, administrative practices and judicial decisions, as well as relevant policy level and other sectorial practices relating to the rights protected by article 19, taking into account the issues discussed in the present general comment. They should also include information on remedies available if those rights are violated.” [↑](#footnote-ref-3)
4. HRC Res 38/11 on the promotion and protection of human rights in the context of peaceful protests, A/HRC/RES/38/11, adopted by consensus on 6 July 2018, at preamble paragraph 22; available at: <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/38/11>. See also: joint report A/HRC/31/66, *op. cit.*, at para. 10. [↑](#footnote-ref-4)
5. 2019 Joint Declaration of UN and regional freedom of expression mandates, available at: <https://www.ohchr.org/Documents/Issues/Opinion/JointDeclaration10July2019_English.pdf>. This principle was first articulated in the 2011 Joint Declaration, available at: <https://www.osce.org/fom/78309>, and is partly reflected in HRC resolution 38/11 on peaceful protests at OP9 “Also calls upon all States to refrain from and cease measures, when in violation of international human rights law, seeking to block Internet users from gaining access to or disseminating information online”. We consider that this approach would also be most consistent with General Comment No. 34, at para 43. [↑](#footnote-ref-5)
6. Measures to block or filter content are technically distinct from methods used to hinder connectivity, and may comply with international human rights law where provided for by law, and ordered by an independent court or adjudicatory body. See “Freedom of Expression Unfiltered: How blocking and filtering affect free speech”, ARTICLE 19, December 2016; available at: <https://www.article19.org/data/files/medialibrary/38586/Blocking_and_filtering_final.pdf> [↑](#footnote-ref-6)
7. 2017 Joint Declaration, *op. cit.*, at para. 1.g. [↑](#footnote-ref-7)
8. “UN rights experts urge India to end communications shutdown in Kashmir”, OHCHR, 22 August 2019; available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24909>. See also ARTICLE 19 analysis of an Internet shutdown in parts of Myanmar (2 August 2019): <https://www.article19.org/wp-content/uploads/2019/08/2019.08.01-Myanmar-Internet-Shutdown-briefing-.pdf>. Also see report of the UN Special Rapporteur on freedom of opinion and expression, A/HRC/35/22, from para. 8; available at: <https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/22> [↑](#footnote-ref-8)
9. A/HRC/35/22, op. cit. [↑](#footnote-ref-9)
10. Report of the UN Special Rapporteur on Freedom of Opinion and Expression, A/HRC/38/35, 6 April 2018; available at: <https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/35> [↑](#footnote-ref-10)
11. *Ibid.*, from para. 64. [↑](#footnote-ref-11)
12. HRC resolution 38/7 on human rights and the Internet, *op. cit.*, emphasises that “in the digital age, technical solutions to secure and protect the confidentiality of digital communications, including measures for encryption and anonymity, can be important to ensure the enjoyment of human rights, in particular the rights to privacy, to freedom of expression and to freedom of peaceful assembly and association”. HRC resolution 38/11 on human rights in the context of peaceful protests, op. cit., notes “that the possibility of using communications technology securely and privately, in accordance with international human rights law, is important for the organization and conduct of assemblies”. [↑](#footnote-ref-12)
13. HRC resolution 38/7, *op. cit.*, at operative paragraph 9. [↑](#footnote-ref-13)
14. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “Encryption and anonymity follow-up report”, June 2018, at page 20. [↑](#footnote-ref-14)
15. Report A/HRC/29/32, at para. 12. [↑](#footnote-ref-15)
16. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/41/35, 28 April 2019; available: <https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/35> [↑](#footnote-ref-16)
17. *Ibid.* at para. 66. [↑](#footnote-ref-17)
18. UN Special Procedures have recognized that States may be obligated to facilitate assemblies that infringe private property interests, making clear that property interests do not enjoy absolute protection under international human rights law. See: Joint report A/HRC/31/66, *op. cit.*, at para. 84. [↑](#footnote-ref-18)
19. The Protest Principles, *op. cit.*, Principle 1.1(a)(v). [↑](#footnote-ref-19)
20. Joint report A/HRC/31/66, *op. cit.*, at paras. 86 and 88. [↑](#footnote-ref-20)
21. HRC Resolution 38/11, *op. cit.*, at operative paragraph 1. [↑](#footnote-ref-21)
22. Protest Principles, *op. cit.*, at Principle 16. [↑](#footnote-ref-22)
23. See, for example: HR Committee, Alekseev vs. Russian Federation, Communication No. 1873/2009, UN Doc. CCPR/C/109/D/1873/2009, 2 December 2013, finding a violation of Article 21. The suggestion that a pro-LGBT rights protest would provoke a negative reaction in the public, whom the authorities considered opposed to the protest’s objectives, was not sufficient basis for denying authorisation to the assembly. [↑](#footnote-ref-23)
24. General Comment No. 34, *op. cit.*, at para. 51 and 52. [↑](#footnote-ref-24)
25. For instances of incitement, the Rabat Plan of Action is informative here. See also, Principle 10.2(a) of ARTICLE 19’s Protest Principles. [↑](#footnote-ref-25)
26. General Comment No. 34, *op. cit.*, at para. 48. And 49. [↑](#footnote-ref-26)
27. ARTICLE 19 “Hate Speech Explained: a Tool Kit”, at page 13, available at: <https://www.article19.org/resources/hate-speech-explained-a-toolkit/> [↑](#footnote-ref-27)
28. General Comment No. 34, at para. 21 [↑](#footnote-ref-28)
29. See the Committee’s general comment No. 27 on article 12, *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40*, vol. I (A/55/40 (Vol. I)), annex VI, sect. A; [↑](#footnote-ref-29)
30. See the Committee’s general comment No. 22, *Official Records of the General Assembly, Forty-Eighth Session, Supplement No. 40* (A/48/40), annex VI [↑](#footnote-ref-30)
31. General Comment No. 34, at paras 35 - 36 [↑](#footnote-ref-31)
32. General Comment No. 34, at para. 36 [↑](#footnote-ref-32)
33. *Ibid.*  [↑](#footnote-ref-33)
34. Special Rapporteur on the promotion and protection of human rights while countering terrorism, reports A/HRC/43/46 (2020) and A/HRC/40/52 (2019), both available at: <https://www.ohchr.org/EN/Issues/Terrorism/Pages/Annual.aspx> [↑](#footnote-ref-34)