**General Comment 37 on the Right of Peaceful Assembly**

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**Rights to freedom of peaceful assembly and of association**

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I wish to congratulate the UN Human Rights Committee on the progress it has made thus far in developing General Comment 37 on the right of peaceful assembly. I, and many others, greatly appreciate the opportunities the Committee has created to ensure that global civil society has been included in this immensely important process.

I would like to draw your attention to the absence of protection of civil society’s right to seek and receive resources, including funding, which is essential for planning, coordinating and participating in assemblies in the current draft of the General Comment. In my thematic report from April 2013, I sought to address restrictions on civil society’s ability to seek and receive funding for the purpose of conducting such activities.[[1]](#footnote-1) In March 2019, I joined a group of 25 civil society organizations around the world who argued that strong language on the related issue be included in General Comment 37.[[2]](#footnote-2)

It is imperative to assert civil society’s right to receive funding in this General Comment, particularly because the current draft rightly acknowledge peaceful assembly to be an individual right with an “associative element” in Paragraph 4.  As article 13 of *the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* states: “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.”[[3]](#footnote-3)

Civil society’s right access to funding in the context of assemblies implicates both a negative and a positive duty.

The positive duty is twofold: (1) to review and revise systems of regulation of financial transactions to ensure that they do not have the indirect effect of restricting access to funding by assembly organizers; and (2) to intercede with financial service providers to ensure that assembly organizers maintain access to funding and financial services. It is, therefore, my recommendation that paragraph 27 be amended as follows:

States parties moreover have the positive duty to facilitate peaceful assemblies, and to make it possible for participants to achieve their legitimate objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly and put into place a legal and institutional framework within which the right can be exercised effectively. This includes ensuring the ability of individual assembly organizers to receive funding for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means. In some cases, specific intervention may be required on the part of the authorities. For example, they may need to block off streets, redirect traffic, provide security or identify an alternative site where the assembly may be conducted. Where needed, states must also protect participants against possible abuses by non-state actors, such as interference or violence by other members of the public, counter-demonstrators [and private security providers].

The negative duty is not to impose direct restrictions on the receipt of funding by assembly organizers, except those justified within the framework of Article 21. This may be a particularly important point for states that take their obligation not to interfere with assemblies more seriously than their obligation to facilitate assemblies. It is my recommendation that text be added ahead of what is currently paragraph 74 in the draft with. This text should state:

“Individuals and associations, including civil society activists and organizations, who plan and participate in assemblies, have the right to seek and receive funding and other resources by legal means, from domestic and foreign donors, to support assemblies and other activities.”

Amending the current draft of the General Comment to incorporate these considerations would greatly strengthen civil society’s ability to exercise their right to assemble and to protect the right to freedom of peaceful assembly.

I think you greatly for your effort and your consideration,

Maina Kiai

1. United Nations, General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, para. 10. (April 24, 2013). Available from <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf>. [↑](#footnote-ref-1)
2. World Movement for Democracy “Submission to the Human Rights Committee

General Comment on ICCPR Article 21 (Right to Peaceful Assembly)”. March 11, 2019. Available from <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC37.aspx> [↑](#footnote-ref-2)
3. UN General Assembly, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, doc. 53/199. (December 9, 1998). Available from <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx> [↑](#footnote-ref-3)