**Comments to the Revised Draft General Comment No. 37 on Article 21 (Right to Peaceful Assembly) of the ICCPR**

MINBYUN - Lawyers for a Democratic Society Public Interest and Human Rights Litigation Center

# Introduction

MINBYUN - Lawyers for a Democratic Society Public Interest and Human Rights Litigation Center is an institute focuses on public interest litigations for the socially vulnerable in the Republic of Korea. We make this submission in response to a call for comments on the revised draft general comment No. 37 on article 21 of the International Covenant on Civil and Political Rights (Freedom of Assembly).

We wish to congratulate the Human Rights Committee, particularly the Rapporteur Mr. Christof Heynes, for the release of the revised draft general comment no. 37. The revised draft provided us with a deep insight on the freedom of peaceful assembly. In general, we, a South Korean NGO, consider that the present revised draft reflects many points that the NGOs have been struggling to promote the freedom of peaceful assembly.

In this present comments, we would like to provide opinions and/or make suggestions for specific paragraphs of the draft as below to ensure the right to peaceful assembly for all. We hope our comments contribute to the Committee's further discussion on finalizing the revised draft.

# Specific comments

## Paragraph 1

1. The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other rights related to political freedom, it also constitutes the very foundation of a system of participatory government based on democracy, human rights [, the rule of law] and pluralism, where change is pursued through persuasion rather than force. Peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain, and to establish the extent of support for or opposition to those ideas and goals. Where they are used to air grievances, peaceful assemblies may create opportunities for inclusive participatory and peaceful resolution of differences.

- Suggestion:

It is not necessary to include 'the rule of law.'

- Reason:

* Apart from the fact that ‘the rule of law’ is an important principle for a democratic society, it seems unnecessary to emphasize ‘the rule of law’ to the same level as democracy, human rights, and pluralism in paragraph 1. It is more reasonable to understand ‘the rule of law’ as a measure that promotes the values of democracy, human rights, and pluralism.
* ‘The rule of law’ is a principle developed mainly from the Western countries and it can be interpreted in various ways in different contextual societies. If it is interpreted superficially, the authorities may use the concept abusively to justify unjust restrictions of human rights and discrimination on minorities by law.
* Some may argue that 'rule of law' should be included to clearly state that human rights violations by the state's use of force will be limited by law. Yet, such purpose can be satisfied by emphasizing the principle of legality in other paragraphs of the draft general comment No. 37, such as paragraphs 43, 44 and 89.

## Paragraph 2

2. The right of peaceful assembly is, moreover, a valuable tool that can and has been used for the realisation of a wide range of other human rights, including socio-economic rights. It can be of particular importance to marginalised and disenfranchised members of society. Peaceful assembly is a legitimate use of the public space. A failure to recognise the right to participate in peaceful assemblies is a marker of repression.

- Suggestion:

Suggest revision of the wording ‘public space.’

- Reason:

* Assemblies may take place in private space such as land owned by a company. The term ‘public space’ may limit the scope of place for assemblies.

## Paragraph 4

4. The right of peaceful assembly protects the non-violent gathering of persons with a common expressive purpose in [a publicly accessible / the same] place. The right of peaceful assembly constitutes an individual right that is exercised collectively. Inherent to the right is thus an associative element.

- Suggestion:

It would be more appropriate to Include ‘the same’ than ‘a publicly accessible.’

- Reason:

* In General Remarks, gatherings protected by article 21 of the Covenant shall be broadly defined. As suggested above for paragraph 2, limiting the place of gatherings to only those publicly accessible may not be able to protect some assemblies taking place in various situations.

## Paragraph 18

18. If an assembly is peaceful, the fact that not all the domestic legal requirements pertaining to the assembly have been met by the organisers or participants does not, on its own, place the participants outside the scope of the protection of article 21. Civil disobedience or direct-action campaigns are in principle covered by article 21, provided they are non-violent.

- Suggestion:

This paragraph needs to further indicate that civil disobedience or direct-action campaigns can be ensured by other rights stipulated in other articles of the Covenant.

- Reason:

* Civil disobedience or direct-action campaigns, including violent cases, may require protection under the international human rights law standards. For example, the civil disobedience or direct-action campaigns aiming to resist against the state authorities’ violence should be protected based on article 21 or other rights stipulated in the Covenant. Moreover, it is necessary to emphasize that the authorities cannot restrict or disperse assembly only for the reason that the assembly seems to be an act of civil disobedience or a direct-action campaign.

## Paragraph 19

19. A violent assembly is one that is characterized by [widespread and serious] violence [, and is sometimes referred to as a riot]. There is not always a clear dividing line between assemblies that are peaceful and those that are violent, but there is a presumption in favour of considering assemblies to be peaceful.[[1]](#footnote-1) Moreover, isolated acts of violence by some participants should not be attributed to other participants.[[2]](#footnote-2) Some participants or parts of an assembly may thus be covered by article 21, while others in the same assembly are not.

- Suggestions:

1. Delete the first sentence; and,
2. Revise the term ‘isolated acts of violence’ in the third sentence to ‘individual acts of violence’

-Reason:

* For a) This document is to promote and protect the right to peaceful assembly. Therefore, providing a vague definition of a ‘violent assembly,’ which could provide a room for arbitrary interpretations to justify restrictions on assembly, would be inappropriate. In particular, using the term ‘riot’ is also inappropriate because ‘riot’ is the term used frequently from the perspective of authorities.
* For b) In actual assembly setting, acts of violence of participants can spontaneously occur in a large crowd. In those situations, it is difficult to tell whether the acts were ‘isolated acts of violence’ and such acts should be evaluated individually. Thus, instead of ‘isolated acts of violence,’ using the phrase ‘individual acts of violence’ seems to be more appropriate to make sure that the assembly organizers and participants are only accountable for their own conduct.

## Paragraph 21

21. Participants’ conduct may be deemed violent if, before or during the event, the participants are inciting others to the [imminent] use of unlawful force, the participants have violent intentions and plan to act on them,[[3]](#footnote-3) or violence is imminent. Isolated instances where this is the case will not suffice to taint an entire assembly as no longer peaceful, but where the incitement or intention of violence is widespread, or if the leaders or organizers of the assembly themselves convey this message, participation in the gathering as such is no longer protected under article 21.

- Suggestion:

It is necessary to revise the phrase ‘..., or if the leaders or organizers of the assembly themselves convey this message’ in the second sentence.

- Reason:

* Even if the leaders or organizers of the assembly convey message of violent intentions, participants of the assembly may exclude those leaders or organizers and continue peaceful assembly. Furthermore, considering the special nature of assemblies being inconvenient to others, the act of ‘conveying message of violent intention’ should be interpreted very narrowly.

## Paragraph 22

22. [Option 1: The scope of article 21 is further determined by article 20 of the Covenant, which requires States parties to prohibit propaganda for war (art. 20 (1)) and advocacy of national, racial or religious hatred that constitutes incitement to discrimination or hostility, in addition to violence (art. 20 (2)). Participation in assemblies where the expressive purpose is covered by article 20 does not fall within the scope of, and is not protected by, article 21. Such assemblies must be prohibited. Option 2 is that this paragraph be deleted, and the need to act against incitement of discrimination or hostility (not violence, that is part of the scope) be dealt with in the section on restrictions that require justification.]

- Suggestion:

Take Option 1.

-Reason:

* Article 20 of the Covenant explicitly prohibit propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Considering the above interpretation of the Covenant, such assemblies that incite discrimination, hostility or violence are outside of the scope of protection by article 21 of the Covenant.

## Paragraph 29

29. In dealing with assemblies, States parties must take precautionary measures aimed at preventing violations and abuses of the different rights at stake. At the same time, the need to take such precautionary measures cannot serve as a justification for measures that violate human rights, such as the right to privacy.

- Suggestion:

In the first sentence, ‘violations and abuses of the different rights at stake’ needs to be revised to be more strict.

- Reason :

* Precautionary measures should be taken only when there are urgent needs because it can cause a chilling effect on peaceful assemblies. Strict requirements, such as ‘a clear and present danger,’ should be stipulated to justify precautionary measures.

## Paragraph 51

51. The “protection of public health” ground may exceptionally permit restrictions to be imposed, for example where there is an outbreak of an infectious disease and gatherings are dangerous. This may in extreme cases also be applicable where the sanitary situation during the assembly presents a substantial health risk to the general public or to the participants themselves.[[4]](#footnote-4)

-Suggestion:

Provide more specific explanation on the meaning of ‘a substantial health risk’ in the second sentence.

- Reason:

* ‘A substantial health risk’ may be abused to to restrict the right to peaceful assembly due to its vagueness. Specific examples of ‘a substantial health risk’ should be suggested for clear interpretation.

## Paragraph 53

53. Restrictions imposed on an assembly on the ground that they are for “the protection of the rights and freedoms of others” may relate to the protection of Covenant or other [fundamental] rights of people not participating in the assembly. The protection of the right to life, freedom from ill-treatment, movement, [property rights] or the right to work may, for example, potentially justify restrictions. At the same time, since assemblies may entail by their very nature a certain level of disruption to ordinary life, such disruptions have to be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions.[[5]](#footnote-5)

- Suggestion:

It is not necessary to include 'property rights.'

- Reason:

* The peaceful assembly can annoy or give offence to others due to its expressive nature. Therefore property rights are usually limited by the assemblies, but only temporarily. Unlike property rights, the rights written in the document without dissent, the right to life, freedom from ill-treatment, movement, and the right to work, are the rights on which limitations directly cause immediate and serious damages. Considering the above interpretation of the rights, it is not necessary to include ‘property rights.’

## Paragraph 58

58. The fact that an assembly provokes or may provoke a hostile reaction from members of the public against participants, as a general rule, does not justify prohibition; the assembly must be allowed to go ahead and its participants must be protected.[[6]](#footnote-6) However, in the exceptional case where the State is manifestly unable to protect the participants from such threat, restrictions on the assembly may be imposed.

- Suggestion:

It is necessary to have stricter requirements for the State to restrict the assembly on the ground that the State is unable to protect the participants.

- Reason :

* This paragraph allows the State to restrict an assembly when the State is manifestly unable to protect the participants from the threat. Since the term ‘manifestly’ can be interpreted arbitrarily by the State, there is a possibility that the State misuses this paragraph to escape its own responsibility. Therefore, a more stricter requirements, such as seeking alternative places for the assembly, are necessary to restrict the assembly on the ground that the State cannot protect the participants. The fact that the State is manifestly unable to protect the participants should be proved and informed to the participants by the State.

## Paragraph 60

60. Generally, the use of flags, uniforms, signs and banners is to be regarded as a legitimate form of expression that should not be restricted, even if such symbols are reminders of a painful past. In exceptional cases, where such symbols are intrinsically and [exclusively / directly] associated with [incitement to discrimination, hostility or violence / acts of violence, or are aimed at intimidating members of the population], restrictions may be justified.[[7]](#footnote-7) Where such symbols are used as part of a broader message of incitement to violence, this may lead to the conclusion that the assembly does not fall within the scope of the “peaceful” assemblies protected by article 21.

-Suggestion:

Include [exclusively] and [acts of violence, or are aimed at intimidating members of the population].

-Reason:

* Using symbols is a way of expression in the assemblies, not the assemblies themselves. Therefore the use of symbols shall be further protected. In this perspective, choosing the expressions of [exclusively] and [acts of violence, or are aimed at intimidating members of the population] would be an appropriate way to minimize the restrictions on the right to peaceful assembly.

## Paragraph 62

62. Concerning restrictions on the time of assemblies: while there are no fixed rules about restrictions on the duration of peaceful assemblies, participants must have sufficient opportunity to effectively manifest their views.[[8]](#footnote-8) Peaceful assemblies are generally by their nature temporary, and should be left to end by themselves. Assemblies should, moreover, not be limited solely because of their frequency. The duration and frequency of a demonstration may play a central role in conveying its message to its target audience. However, the cumulative impact of sustained gatherings should not disproportionately impact the rights of others.

- Suggestion:

In the last sentence, replace the term ‘impact’ with ‘harm’ or ‘violate’.

- Reason:

* The phrase “impact the rights of others” can be interpreted broadly which can cause the unjust restrictions on the time and the duration of peaceful assemblies. Instead of using the word ‘impact,’ replacing it with a more specific term, such as ‘harm’ or ‘violate,’ may be more appropriate.

## Paragraph 65

65. Participants in assemblies may not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed, or the general public.[[9]](#footnote-9) As a general rule, prohibitions on all assemblies anywhere in the capital;[[10]](#footnote-10) in any public location except a single specified place, either in a city,[[11]](#footnote-11) or outside the city centre;[[12]](#footnote-12) or prohibitions on assemblies in “all the streets in the city”, may not be imposed.

- Suggestion:

In the last sentence, change “may not” to “should not.”

- Reason:

* It is obvious that having a comprehensive prohibition on places for peaceful assemblies is a violation of international human rights laws. Using ‘may not’ in the last sentence may pose a risk of misinterpreting the paragraph as if it allows a comprehensive prohibition in exceptional circumstances.

## Paragraph 66

66. The designation of the perimeters of places such as courts, parliament or other official buildings as areas where assemblies may not take place should generally be avoided, because these are public spaces. To the extent that assemblies in such places are prohibited, the restrictions must be specifically justified and narrowly circumscribed.[[13]](#footnote-13)

- Suggestion:

It is necessary to emphasize that peaceful assemblies should, in principle, be encouraged to take place around the perimeters of places such as court, parliament or other official buildings.

- Reason:

* Official buildings, parliament and etc, are the places where the actors of the authorities are gathered. To promote democracy, criticism and other expressions should be encouraged toward those places. In this perspective, peaceful assemblies should be encouraged to take place more around the perimeters of official buildings.

## Paragraph 67

67. The increased privatization of public spaces highlights the fact that assembly rights may require some recognition on private property that is open to the public.[[14]](#footnote-14) The interests of private owners have to be given due weight, but may have to be limited if the participants have no other reasonable way to convey their message to their target audience.[[15]](#footnote-15) Assemblies held on privately owned property with the consent of the owners enjoy the same protection as other assemblies.

- Suggestion:

From the perspective of promoting peaceful assemblies, the phrase, ‘if the participants have no other reasonable way to convey their message to their target audience,’ in the second sentence should be revised.

- Reason:

* The requirement, “without other reasonable way,” can be abused and infringe the right to peaceful assembly. For example, when workers want to hold an assembly inside a company for specific symbolic reasons, the state may limit the assembly on the grounds that the workers can convey their message to their target audience outside the company.

## Paragraph 70

70. The wearing of face coverings or other disguises by assembly participants, such as hoods or masks, may form part of the expressive element of a peaceful assembly or serve to counter reprisals, also in the context of new surveillance technologies, and serve to protect privacy. Assembly participants should not be prohibited from wearing face coverings where there is no demonstrable evidence of imminent violence on their part and probable cause for arrest.[[16]](#footnote-16) As such, blanket bans can only be justified on an exceptional basis.

- Suggestion:

Revise the last sentence as blanket bans cannot be justified even on an exceptional basis.

-Reason:

* If blanket bans of wearing face coverings are exceptionally justified, it can cause an enormous chilling effect on peaceful assemblies. It can also severely infringe the right to privacy of participants in assemblies.

## Paragraph 71

71. The collection of relevant information and data by authorities may under certain circumstances assist the management of assemblies, improve public accountability and constitute part of a proactive approach to preventing violations and abuses of rights from occurring. However, any information gathering, including through surveillance or the interception of communications, and the way in which data are retained and accessed, must strictly conform to the applicable international standards, including on the right to privacy, and may never be aimed at intimidating or harassing (would-be) participants in assemblies.[[17]](#footnote-17) Such practices should be regulated by appropriate and publicly accessible domestic legal frameworks compatible with international standards and subject to scrutiny by the courts.[[18]](#footnote-18)

- Suggestion:

It is necessary to remove ‘constitute part of a proactive approach to preventing violations and abuses of rights from occurring’ in the first sentence.

- Reason:

* There is a presumption in favour of considering assemblies to be peaceful. Since assemblies are different from terror or crimes, it is not appropriate to see certain assemblies as pre-preventable activities. State’s proactive data collection might severely infringe the right to privacy of the participants of assemblies, and it can cause a chilling effect on peaceful assemblies.

## Paragraph 73

73. The freedom of State officials to participate in peaceful assemblies should not be limited more than is strictly required by the need to ensure public confidence in their impartiality, and thus their ability to perform their service duties.[[19]](#footnote-19) Ensuring that members of the security forces in particular retain public confidence in their impartiality is a legitimate State concern.

- Suggestion:

It is necessary to relax the requirement for State officials to participate in peaceful assemblies.

- Reason:

* State officials can participate in peaceful assemblies as an individual or as a worker. Therefore it is necessary to relax ‘the need to ensure public confidence,’ a requirement that comprehensively restricts State officials’ freedom to participate in peaceful assemblies.

## Paragraph 75

75. Assembly organizers and participants are obliged to make reasonable efforts to comply with legal requirements, but they should be held accountable [, civilly or criminally,] for their own conduct only.[[20]](#footnote-20) Responsibility of organizers or participants for damage caused by other participants in an assembly should as a general rule not be imposed.[[21]](#footnote-21) If this is done, responsibility must be limited to what they could have foreseen and prevented with reasonable efforts. It is good practice for assembly organizers to appoint marshals where necessary, but such an obligation must not be imposed.

- Suggestion:

Include [, civilly or criminally,]

- Reason:

* In many cases, the State files a civil lawsuit against protesters and punishes the assembly organizers and participants for illegal activities conducted by other participants. Given these circumstances, it is necessary to clarify the principle that the assembly organizers and participants are only accountable for their own conduct both in civil and criminal procedures.

## Paragraph 80

80. Notification systems entail that those intending to organize a peaceful assembly are required to inform the authorities accordingly in advance and provide certain salient details. Such a requirement is permissible to the extent necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others. At the same time, this requirement can be misused to stifle peaceful assemblies. Like other interferences with the right of assembly, notification requirements have to be justifiable on the grounds listed in article 21. The enforcement of notification requirements must not become an end in itself. Notification procedures should not be unduly burdensome and must be proportionate to the potential public impact of the assembly concerned.

- Suggestion:

Make clear that advance notification of an assembly is not a required procedure under the international human rights law.

- Reason:

* The guidelines prepared by the Venice Commission and OSCE/ODIHR state that advance notification of an assembly is not a required procedures under the international human rights law.[[22]](#footnote-22) This statement should be emphasized in this general comment No. 37. The State might continuously insist that the advance notification of an assembly is a required procedure if this document does not clarify whether it is a required procedure or not.

## Paragraph 81

81. A failure to notify the authorities of an assembly [should not render participation in the assembly unlawful, and] should not in itself be used as a basis for dispersing the assembly or arresting the participants or organisers, or the imposition of undue sanctions such as charging them with criminal offences.[[23]](#footnote-23) It also does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants.

- Suggestion:

Include [should not render participation in the assembly unlawful, and], while changing the word ‘participation’ to ‘organization and participation’

- Reason:

* It is necessary to clarify that not only the participation in the assembly but also organizing the assembly should not be rendered unlawful.

## Paragraph 95

95. Containment, sometimes referred to as “kettling”, where law enforcement officials encircle and close in a section of the demonstrators, may be used only where it is necessary and proportionate to do so, in order to prevent violence during an assembly. A legitimate aim is to facilitate the right of non-violent participants to continue to exercise their right of peaceful assembly. Necessary and targeted law enforcement measures taken against specific individuals are often preferable to containment. Particular care must be taken to contain, as far as possible, only people who could be linked directly to violence and to limit the duration of the containment to the minimum necessary. Where the tactic of containment is used indiscriminately or punitively, it violates the right of peaceful assembly, and may also violate other rights such as freedom from arbitrary detention and freedom of movement.

- Suggestion:

The use of ‘kettling’ should be allowed under the stricter and strengthened requirements.

- Reason:

* ‘Kettling’ is the measure that can completely deprive freedom to move of an individual and it can have the same effect as ‘arrest’ in some cases. It is a method that restricts assemblies and should be used as little as possible. Therefore there should be stricter requirements for kettling. For example, alternative measures should be considered before using kettling.

## Paragraph 96

96. Only in exceptional cases may an assembly be dispersed. This may be the case if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence, but in all cases the rules on the use of force must be strictly followed. An assembly that remains peaceful but which nevertheless causes a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is “serious and sustained”.[[24]](#footnote-24)

- Suggestion:

It is necessary to remove the last sentence, “An assembly that remains peaceful but which nevertheless causes a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is ‘serious and sustained.”

- Reason:

* The blocking of traffic is a natural phenomenon, given the unique nature of assemblies, which is not a factor that makes a particular assembly violent. If the blocking of traffic is used as a ground to disperse assemblies, it can cause a chilling effect on peaceful assemblies. Additionally, the element of ‘serious and sustained’ disruption can be interpreted arbitrarily, so that stricter requirements are necessary. In all circumstances, the principle that the peaceful assemblies cannot be dispersed should be upheld.

## Paragraph 97

97. Where a decision is lawfully taken to disperse an assembly, force should be avoided. Where that is not possible in the circumstances, only the minimum force necessary should be used.[[25]](#footnote-25) As far as possible, any force used should be directed against a specific individual or group of participants in an assembly. Area weapons such as chemical irritants dispersed at a distance (tear gas) and water cannon tend to have indiscriminate effects. When such weapons are used, all reasonable efforts should be undertaken to limit risks such as causing harm to bystanders or causing a stampede. Tear gas should not be used in confined spaces.[[26]](#footnote-26)

- Suggestion:

The state authorities’ use of water cannons and tear gas must be strictly prohibited.

- Reason:

* Water cannons and tear gas are weapons that can pose danger directly to an individual's life and body. This paragraph can be used abusively to allow the use of water cannons and tear gas extensively. For example, the sentence, "Tear gas should not be used in confined spaces", can be understood as allowing the use of tear gas in unconfined spaces. It should be noted that water cannons and tear gas are not appropriate measures to disperse the assemblies, because they cannot be used to a specified person or group only.

## Paragraph 98

98. Firearms are not an appropriate tool for the policing of assemblies.[[27]](#footnote-27) Firearms must never be used simply to disperse an assembly.[[28]](#footnote-28) In order to comply with international law, any use of firearms by law enforcement officials must be limited to targeted individuals in circumstances in which it is strictly necessary to confront an imminent threat of death or serious injury or, in truly exceptional circumstances, a grave and proximate threat to life.[[29]](#footnote-29) Given the threat such weapons pose to life, this minimum threshold should also be applied to the firing of rubber-coated or plastic bullets.[[30]](#footnote-30) It is never acceptable to fire indiscriminately into a crowd. Where law enforcement officials are prepared for the use of force, or violence is considered likely, the authorities must also ensure adequate medical facilities.

- Suggestion:

The state authorities’ use of firearms should be strictly prohibited.

- Reason:

* This paragraph could be used to justify the authorities’ use of firearms. Moreover, this paragraph did not mention the authorities’ obligation to consider alternative measures or the precedent measures, such as warnings. It is not appropriate that the international human rights laws have perspectives that allow the use of firearms which can directly take someone’s life.

## Paragraph 103

103. Any deployment of plainclothes officers in assemblies must be reasonably necessary in the circumstances and such officers (or other State agents) must never incite violence on the part of other participants, for example, by acting as agents provocateurs.[[31]](#footnote-31)

- Suggestion:

It is necessary to remove the whole paragraph.

- Reason:

* This paragraph may allow the use of plainclothes officers extensively under the loose requirement, ‘reasonably necessary in the circumstances’. There is a fundamental question of what ‘reasonably necessary in the circumstances’ means. It is also questionable whether there is a special need for the use of plainclothes officers at assemblies. Above all, it is inappropriate that the international human rights law allows the use of plainclothes officers who can incite the violence and collect information of citizens secretly.

## Paragraph 105

105. The use of recording devices by law enforcement officials during assemblies, including through body-worn cameras, may play an important role in securing accountability. However, the authorities should have clear and publicly available guidelines to ensure that their use is consistent with international standards on privacy and does not have a chilling effect on participation in assemblies.[[32]](#footnote-32)

- Suggestion:

The use of body-worn cameras for the purpose of evidence collection activity should not be allowed.

- Reason:

* The use of body-worn cameras can seriously infringe the rights to privacy of the participants of assemblies and public. Therefore the use of body-worn cameras should not be allowed. If allowed, the use of body-worn cameras should be guided by ‘laws’ not ‘guidelines’ and the use should be disclosed to the participants and the general public.

## Paragraph 113

113. At the same time, participants in peaceful assemblies must not infringe on the rights of others. This may for example include their freedom of movement (art. 12 (1)). Socio-economic rights, such as the right to health or to education, may be implicated by assemblies in or proximate to amenities such as hospitals or educational facilities.

- Suggestion:

The paragraph needs to emphasize that the protection of the rights of others is, in principle, the duty of the State, not the duty of participants of peaceful assemblies

- Reason:

* Protecting the individuals' rights is one of the fundamental duties of a State. Therefore, in principle, it is an obligation of the State, not the participants of assemblies, to protect the rights of individuals whose rights were infringed by participants of assemblies.

1. European Court of Human Rights, *Lashmankin and others v. Russia* (applications Nos. 57818/09 and 14 others), judgment of 7 February 2017, paras. 402–403. [↑](#footnote-ref-1)
2. European Court of Human Rights, *Frumkin v. Russia*, para. 99. [↑](#footnote-ref-2)
3. European Court of Human Rights, *Lashmankin and others v. Russia*, para. 402. [↑](#footnote-ref-3)
4. European Court of Human Rights, *Cisse v. France* (application No. 51346/99), judgment of 9 April 2002. [↑](#footnote-ref-4)
5. *Stambrovsky v. Belarus* (CCPR/C/112/D/1987/2010), para. 7.6; *Pugach v. Belarus* (CCPR/C/114/D/1984/2010), para. 7.8. [↑](#footnote-ref-5)
6. *Alekseev v. Russian Federation*, para. 9.6 [↑](#footnote-ref-6)
7. OSCE, *Guidelines on* *Freedom of Peaceful Assembly*, para. 97. See also European Court of Human Rights, *Osmani and others v. the former Yugoslav Republic of Macedonia* (application No. 50841/99) decision of 11 October 2001; and *Fáber v. Hungary* (application No. 40721/08), judgment of 24 October 2012, paras. 56–58, in which the Court outlined a threshold of intimidation. [↑](#footnote-ref-7)
8. European Court of Human Rights, *Éva Molnár v. Hungary* (application No. 10346/05), judgment of 7 October 2008, para. 42. [↑](#footnote-ref-8)
9. Ibid.; CCPR/C/KAZ/CO/1, para. 26. [↑](#footnote-ref-9)
10. CCPR/C/DZA/CO/4, para. 45. [↑](#footnote-ref-10)
11. *Turchenyak et al. v. Belarus*, para. 7.5. [↑](#footnote-ref-11)
12. *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010), para. 8.5. [↑](#footnote-ref-12)
13. European Court of Human Rights, *Yilmaz Yildiz and others v. Turkey* (application No. 4524/06), judgment of 14 October 2014, para. 43. [↑](#footnote-ref-13)
14. European Court of Human Rights, *Annenkov and others v. Russia* (application No. 31475/10), judgment of 25 July 2017, para. 122; United States Supreme Court, *Marsh v. Alabama* (*United States Reports*,vol. 326, No. 501, 1946), p. 2. [↑](#footnote-ref-14)
15. European Court of Human Rights, *Appleby and others v. United Kingdom* (application No. 44306/98), judgment of 6 May 2003, para. 47. In *Giménez v. Paraguay* (CCPR/C/123/D/2372/2014), para. 8.5, the Committee held that a two-year restriction on participation in assemblies after the occupation of a private property was excessive. [↑](#footnote-ref-15)
16. Cf. OSCE *Guidelines on Peaceful Assembly*, para. 98; ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 81. [↑](#footnote-ref-16)
17. A/HRC/31/66, para. 73. [↑](#footnote-ref-17)
18. CCPR/C/KOR/CO/4, paras. 42–43. [↑](#footnote-ref-18)
19. OSCE, *Guidelines on* *Freedom of Peaceful Assembly*, para. 60. [↑](#footnote-ref-19)
20. A/HRC/31/66, para. 26. [↑](#footnote-ref-20)
21. OSCE, *Guidelines on* *Freedom of Peaceful Assembly*, para. 197. Compare Constitutional Court of South Africa, *South African Transport and Allied Workers Union and another v. Garvas and others* (case CCT 112/11) [2012] ZACC 13. [↑](#footnote-ref-21)
22. See, Venice Commission & OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*. 3rd ed., 2019, para. 25. [↑](#footnote-ref-22)
23. Where administrative sanctions are imposed for the failure to notify, this must be justified by the authorities. See, e.g., *Popova v. Russian Federation*, para. 7.4, 7.5. See also A/HRC/31/66, para. 23. [↑](#footnote-ref-23)
24. A/HRC/31/66, para. 62. [↑](#footnote-ref-24)
25. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 13; A/HRC/26/36, para. 75. [↑](#footnote-ref-25)
26. S/2009/693, annex, para. 62; and *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 7.3.7. [↑](#footnote-ref-26)
27. ACHPR, *Guidelines on Policing Assemblies in Africa*, para. 21.2.4. [↑](#footnote-ref-27)
28. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 14. [↑](#footnote-ref-28)
29. Ibid.; Principles 9 and 14; and General comment No. 36. [↑](#footnote-ref-29)
30. *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 7.5.8. [↑](#footnote-ref-30)
31. European Court of Human Rights, *Ramanauskas v. Lithuania*, judgment of 5 February 2008, para. 54. [↑](#footnote-ref-31)
32. CCPR/C/CHN-HKG/CO/3, para. 10; CCPR/C/CHN-MAC/CO/1, para. 16. [↑](#footnote-ref-32)