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COMMISSARIAT

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COMMITTEE ON THE RIGHTS OF THE CHILD
COMMENTS ON HUMAN RIGHTS COMMITTEE'S REVISED DRAFT GENERAL
COMMENT NO. 37 ON ARTICLE 21 (RIGHT OF PEACEFUL ASSEMBLY) OF
THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

1. Introduction

The Human Rights Committee has invited submissions to inform the drafting of a General Comment (the “draft General Comment”) on Article 21 (right of peaceful assembly) of the International Covenant on Civil and Political Rights (“ICCPR”). The Committee on the Rights of the Child (the “CRC Committee”) takes the opportunity to present its comments on the draft General Comment.

This submission

- Places emphasis on children's rights of peaceful assembly;
- Compares article 15 of the CRC with article 21 of the ICCPR;
- Identifies the various contexts in which children may be involved in peaceful assembly;
- Highlights the CRC Committee's observations on children participating in peaceful assemblies;
- Identifies positive obligations on States parties regarding peaceful assembly in relation to children;
- Evaluates restrictions on peaceful assembly in relation to children;
- Makes recommendations for the Human Rights Committee's revised General Comment no 37 on article 21.

2. The views of child human rights defenders

At the outset, the Committee commends the efforts made by the Human Rights Committee to hear from children through its partnership on this General Comment with Child Rights Connect, who conducted a survey of children's opinions. The very process of consulting with children on a General Comment is an important recognition of their right to participation. As the CRC Committee observed in its General Comment no 12. On the right of the child to be heard (2009), the concept of participation is ‘the starting point for an intense exchange

between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives'.¹

The CRC Committee's Day of General Discussion on Children as Human Rights Defenders ("the DGD 2018") culminated in a report which is relevant to the drafting of this General Comment, as it deals with aspects of the right of peaceful assembly.²

The CRC Committee notes that Child Rights Connect is submitting excerpts from the abovementioned report, capturing the views of children as expressed at the DGD (2018) and also from the survey conducted, and we encourage the Human Rights Committee to consider these views and take them into serious consideration in the finalization of this General Comment.

The CRC Committee also notes that children are increasingly expressing their views on issues that concern them such as access to services, including education, as well as climate change. With regard to the latter, the Committee draws attention to its recent public statement indicating its support for children's right to engage in peaceful assembly:

"The CRC Committee said it was "inspired by the millions of children and adolescents who marched for climate change last week," the Committee – which has regularly addressed the environment, climate change and the degradation of the planet – welcomed "the active and meaningful participation of children, as human rights defenders, in relation to issues of concern to them along with everyone else."³

3. Article 15 of the Convention on the Rights of the Child

Article 15

1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 15 of the CRC is similar to article 21 of the ICCPR. However, like the Universal Declaration of Human Rights (and different from the ICCPR), it includes freedom of association and freedom of assembly within one clause. Nevertheless, the wording of sub-article 2 on restrictions on the freedom of peaceful assembly does not differ, it is identical to the wording of article 21 of the ICCPR. Therefore, there should be no additional restrictions on children than there are on adults in the context of freedom of peaceful assembly.

Article 15 is one of a cluster of rights in the Convention on the Rights of the Child, which the CRC Committee's reporting guidelines refer to as 'Civil rights and freedoms' (arts. 7, 8, and

¹ Para 13.

²https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2018/crc_dgd_2018_outcomereport_en.pdf.

³ UN Child Rights committee voices support for children campaigning on climate change, 27 Sept 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25068&LangID=E>

13-17).⁴ These, briefly stated, are the rights to birth registration, a name and nationality, preservation of identity, freedom of expression, freedom of thought, conscience and religion, freedom of association and peaceful assembly, protection of privacy, access to appropriate information. It is also apparent that article 12 – the freedom to express views on all matters concerning them, and that those views are to be given due weight - is closely allied to the other civil freedoms, including article 15.

4. Children participating in peaceful assemblies

It is important to note that children who participate in peaceful assembly may do in the following situations:

- (1) where they accompany their parents who are participating in peaceful assembly, including peaceful protests; and
- (2) where they participate of their own volition and by themselves (with or without parental approval). This may take place
 - (a) in actual physical assemblies such as strikes, sit-ins or marches, and/or
 - (b) in the ‘virtual’ context of on-line participation.

4.1 Children participating in peaceful assembly with their parents

Children are in many instances ‘brought along’ to protest by their parents or other adults. In some cases this is due to the fact that the parent is the caregiver and has no option to leave the child in the care of another. In other situations the parent views this as part of child’s development of civic awareness. In this regard, the important features to emphasize are as follows:

- Children have the right to be present at peaceful assemblies with their parents or other adults;
- The State should not take a negative or punitive approach to parents involving their children in peaceful assemblies.⁵;
- That although parents bear responsibility for the care and protection of children in such situations, the State has a positive duty to protect children’s rights⁶ and must at all times act with an awareness that children may be present at the assembly, and protect them from any harm that might be occasioned by law enforcement actions as well as harm caused by other participants in the assembly.

⁴ Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, CRC/C/58/Rev.3, para. 28.

⁵ For example, in February 2020, the Indian Supreme Court issued notice to the government and interested NGOs that it had taken *suo motu* cognisance of the death of a young child who was taken to a protest action by his mother. See further <https://www.asianage.com/metros/delhi/110220/shaheen-bagh-child-death-sc-takes-suo-motu-cognisance.html>.

⁶ A. Daly ‘Article 15: The right to freedom of association and freedom of peaceful assembly’ in the series edited by A. Alen et al. *A Commentary on the United Nations Convention on the Rights of the Child* (2016) Leiden, Boston: Brill at p 31-2.

- Banning children from being brought to such assemblies, even though it may be aimed at protecting them from harm, is generally not compatible with article 15 of the CRC. Restrictions are not permissible unless they can be shown to have been provided for by law, and are necessary and proportionate in relation to the permissible grounds for restrictions enumerated in article 15(2). Less restrictive measures should be taken, guided by the objective of facilitating the right, while ensuring that all reasonable efforts are made to protect children from violence, detention and other negative effects.

4.2 Children participating in peaceful assemblies as individuals or groups, separate from their parents

(a) In actual physical assemblies

Children often have difficulty in participating in assemblies as they often face first-line resistance from caregivers and teachers, and from the State. The CRC Committee notes academic and legal arguments that children may have an enhanced right to participate in peaceful assemblies because they are generally unable to vote,⁷ and therefore peaceful assembly is a means to bring about change.⁸

Indeed, the CRC committee has on occasion pointed out to States during reviews of the State parties that children have the right to associate, to express views and to be involved in peaceful assembly activities.⁹ The important features are:

⁷ Aiofe Nolan, "The Child as 'Democratic citizen' - Challenging the Participation Gap" (2010) *Public Law* 126; S. Lecce, "Should Democracy Grow up? Children and Voting Rights" (2009) 4 *Intergenerational Justice Review* 133.

⁸ As found by the South African Constitutional Court in *Mlungwana v S* (CCT32/18) [2018] ZACC 45, at para 72. "In particular, it must be emphasised that for children, who cannot vote, assembling, demonstrating, and picketing are integral to their involvement in the political process. By virtue of their unique station in life the importance of the section 17 right has special significance for children who have no other realistic means of expressing their frustrations. Indeed, this is internationally acknowledged in instruments such as the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child which specifically protect the child's right to express its views and to participate in public life".

⁹ See for example, the Concluding Observations to Ecuador: 'The Committee is concerned about violence against children during public demonstrations, and disciplinary measures and sanctions imposed on children taking part in protests, and recommends that the State party: (a) Promote, protect and facilitate freedom of association and peaceful assembly of children and withdraw laws and regulations that allow for sanctions in connection with the exercise of the right to freedom of association and peaceful assembly; (b) Speed up the adoption of a protocol on how to deal with children in the context of public demonstrations and ensure that it is in line with the Convention; (c) Create a complaint mechanism for children who have faced any form of violence, excessive use of force or arbitrary detention during public protests, and set out adequate sanctions for public officials that violate the right to freedom of association and peaceful assembly of children.' (CRC/C/ECU/CO/5-6, para. 21). The Concluding Observations to Panama: 'The Committee also recommends that the State party re-establish the authorization to form student groups in order to grant adolescents the right to peaceful assembly, in line with article 15 of the Convention.' (CRC/C/PAN/CO/5-6, para. 19). The Concluding Observations to El Salvador: 'The Committee encourages the State party to promote and protect the right of children to freedom of association and peaceful assembly and to ensure that, in the current climate of violence, law enforcement officials and other professionals are trained adequately to respect those rights.' (CRC/C/SLV/CO/5-6, para. 19). The Concluding Observations to Australia: 'The Committee expresses its concern and disappointment that a protest led by children calling on government to protect the environment received a strongly worded negative response from those in authority, which demonstrates disrespect for the right of children to express their views on this important issue' (CRC/C/AUS/CO/5-6 2019, para 40). See also the Concluding Observations to Hungary: 'Ensure that children enjoy their right to freedom

- Children have a right to participate in peaceful assemblies, and civic education needs to ensure that children, parents and teachers all understand this.
- There are certain risks to being involved in peaceful assemblies, especially public protest actions that take place in public spaces such as parks and streets, because they can turn violent. Civic education should thus ensure that children are made aware of these risks so that they can make informed choices on whether to participate or not.
- Facilitation of peaceful protest is the best means to ensure that it remains peaceful, and thus parents, teachers and law enforcement officials should take pro-active steps in this regard.
- Children should never be sanctioned for participating in peaceful assemblies. Even if such assemblies turn violent, children should not be subjected to groups action, random arrests or detentions., which may constitute unlawful or arbitrary deprivation of liberty of the child in violation of Article 37(b) of the CRC.¹⁰ If specific children are reasonably suspected, as individuals, of having perpetrated violence themselves, they should be dealt with in child justice systems in processes that conform to Articles 37 and 40 of the Convention on the Rights of the Child, in line with the CRC Committee's General Comment 24 on the rights of children in child justice systems.

(b) Children participating in the digital environment

It should be noted that for children, particularly adolescents, much of their freedom of association and assembly may be exercised on-line as well as off-line. Children participating in the DGD 2018 on Children as Human Rights defenders said that the digital environment is an integral part of their activities. They noted that online activities can be very empowering, but social media involved risk such as being harassed, bullied or victimized for their opinions or their activities. However, they were clear that this can be managed and that States should not restrict online space for children expressing their views.¹¹ The important issues in relation to this context, as set out in the final report of the DGD 2018¹² are as follows:

- States should provide a safe and enabling online space for child human rights defenders, including access to safe online platforms, and training on online safety.
- States should ensure that internet providers and companies facilitate connectivity and accessibility to all children and that safety settings are clear and accessible, including for children with disabilities.

of expression including when participating in peaceful demonstrations, and do not suffer negative consequences, such as charges of petty offences by the police'(CRC/C/HUN/6 2020, para 29).

¹⁰ See for example the CRC Concluding Observations to Chile: 'The Committee is deeply concerned about the repressive manner adopted by the State party to address the 2011-2012 demonstrations by students demanding changes in the education system and the abusive use of detention measures ..The committee recommends that the State party develop and monitor the implementation of police protocols and procedures on dealing with public protests that are compliant with human rights standards and the Convention in particular'.

¹¹ UNCRC DGD 2018 Protecting and empowering children as human rights defenders: Report, para 15.

https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2018/crc_dgd_2018_outcomereport_en.pdf

¹² Ibid para 34.

- States should encourage information and communication technology businesses to involve children in the development and monitoring of initiatives and tools for the online protection of children.

5. Positive obligations on States regarding peaceful assembly in relation to children

The Committee is of the view that States need to take pro-active steps to ensure that children can exercise their right to freedom of peaceful assembly fully and safely. These positive obligations include the following:

- States should ensure a legal framework for peaceful assembly that complies with international human rights standards, with particular attention paid to children.
- Laws and rules should be communicated in language and in places that are accessible to children.
- States should ensure that children are provided information on their right of peaceful assembly, and encouraged to discuss the benefits and risks so that they can make informed decisions about their participation.
- States should support children's associations, including child-led activities.
- Support should be provided to families whose children are involved in peaceful assembly to assist them in their role of protecting and empowering children.
- Teachers and other relevant persons engaging with children should be trained on the right of peaceful assembly.
- States should ensure that law enforcement and other relevant officials are trained on children's rights in public assembly situations.¹³
- Children's rights should be considered at all stages of planning and decision-making by law enforcement authorities for the management of public assemblies.¹⁴
- Children should be actively protected from any harm in the context of public assemblies, through nuanced and innovative approaches rather than through unnecessary restriction of their rights of peaceful assembly, including in the digital environment.
- States should provide mechanisms for complaints of breaches of children's rights of peaceful assembly, provide assistance and ensure effective remedies where their rights are violated.

6. Restrictions on peaceful assembly in relation to children

Children's right of peaceful assembly must be recognised and promoted, but at the same time, the CRC requires that their best interests are a primary consideration (factoring in their views, according to their evolving capacity), and that they are protected from all forms of violence. This leads to a reasonable concern about whether there are grounds to set a higher level of restriction on the right of children to participate in peaceful assemblies, as it is understood that such assemblies may turn violent. The Committee's position is that States parties should not place additional limits on children's rights to association and assembly, vis-à-vis those placed on adults.¹⁵

¹³ Concluding Observations on Syria (CRC/C/SYR/CO 3-4 2012, para 47).

¹⁴ Anita Danka 'The right of children to be heard through peaceful protests' in Philip Czech et al *European Yearbook on Human Rights* (2019) 405-415 at 412.

¹⁵ See Aiofe Daly (2016) 107, and the references to the CRC Committee's jurisprudence provided there.



6.1 Are age limits preventing children from participating in peaceful assembly a reasonable restriction?

The CRC Committee has taken the position that this is not an acceptable form of restriction, even if it is done for the protection of children. Indeed, in practice many States do place additional restrictions on children when it comes to freedom of association and freedom of peaceful assembly, and the CRC Committee has frequently pointed this out to States parties.¹⁶

The CRC Committee has recommended to a considerable number of States Parties that they should amend laws that prevent persons below 18 years from forming associations,¹⁷ or laws that prevent persons below a certain age from organising outdoor meetings,¹⁸ as such laws are contrary to the rights enshrined in article 15.¹⁹

6.2 Are blanket rules about notice periods prior to assembly a reasonable restriction for children?

This type of restriction is more disproportionate for children as they may have less knowledge of the requirements.

The Committee notes the approach of the South African Constitutional Court in this regard, which found that notice requirements were a particularly problematic limitation for children, especially if they were linked to criminal liability. The Court held that the limitation was egregious because it did not distinguish between adult and child convenors. In the words of the Court:

‘This means that children – who may not even know about the notice requirements in the Act or have the resources to adhere to the notice requirement – are indiscriminately held criminally liable if they fail to give notice before convening a gathering. This Court has acknowledged how exposing children to the criminal justice system – even if diverted under the Child Justice Act is traumatic and must be a measure of last resort. To expose children to criminal liability, as section 12(1)(a) does, therefore severely exacerbates the extent of the limitation. Accordingly, to subject children to the full rigour of the penal sanction for which section 12(1)(a) provides, given their vulnerability and lack of self-restraint in comparison to adults, cannot be justified on any rational basis’.²⁰

7. Recommendations for amendments to revised draft General Comment no.37

While the draft General Comment is an excellent and detailed document, the CRC Committee is of the respectful view that it lacks sufficient specificity regarding the exercise of the rights

¹⁶ Concluding Observations to Costa Rica (CRC/C/15/Add.266 2005, para. 23); Concluding Observations to Viet Nam (CRC/C/VNM/CO/3–4 2012, paras. 41–42); Concluding Observations to Ukraine (CRC/C/UKR/CO/3–4 2011, paras. 39–40); Concluding Observations to Hungary CRC/C/HUN/6 2020 para 29).

¹⁷ For example, Concluding Observations to Ukraine (UN Doc No CRC/C/UKR/CO/3–4, 2011, paras. 39–40); Concluding Observations to Kuwait (CRC/C/KWT/CO/2, 2014, para. 40); Concluding Observations to Hungary (CRC/C/HUN/6 2020, para 29).

¹⁸ For example, Concluding Observations to Turkey (CRC/C/R/CO/2–3 2012, para. 38). See further Aiofe Daly (2016) p 77).

¹⁹ Aiofe Daly (2016) p 78 notes that the Special Rapporteur on the Right to Peaceful Assembly has made reference in positive terms to a 1996 judgment of the Constitutional Review Chamber of the Supreme Court of Estonia which found legislation banning under 18-s from forming or leading associations was incompatible with CRC Article 15.

²⁰ *Mlungwana v S* (CCT32/18) [2018] ZACC 45, at para 89.



of peaceful assembly by children. It is of course acknowledged that this is a document intended to cover the rights of all persons, and thus children are, generally, included.

There are two ways to enhance the document in ways that further advance the exercise of the right to peaceful assembly by children. The first is to add words, sentences or paragraphs within the body of the text. The second is to propose a separate detailed paragraph. The CRC Committee is mindful that if either of these options is adopted, the HRC also has to consider whether this approach is reasonable, as there are other vulnerable persons/groups who might need to be considered. The proposed approach is a hybrid one, including some minor additions, as well as the addition of some substantive paragraphs.

Taking all of the above into consideration, the following proposals are made:

Para 2: After 'It can be of particular importance to marginalised and disenfranchised members of society' add: , particularly persons who do not enjoy the right to vote, such as children.²¹

Para 6: Add the words 'school strikes' somewhere in the list.

After para 28: Add following paras

States should act on the recognition of children's right to freedom of association and freedom of peaceful assembly by creating an enabling environment for such activities. This includes supporting children's associations, including child-led associations, ensuring that teachers, parents and children themselves are educated about the right to peaceful assembly, and providing support to children involved in peaceful assembly to assist them in their role of protecting and empowering children.

The law and policy frameworks should include specific provisions relating to children's rights. Laws and rules regarding peaceful assembly should be widely communicated in a manner that is accessible to all children. Children should be actively protected from any harm in the context of public assemblies, through balanced and innovative approaches rather than through unnecessary restriction of their rights, including in the digital environment. Law enforcement authorities should be trained and they should plan for children's participation in demonstrations

States should refrain from setting age limits below which persons are banned from participating fully in the right to peaceful assembly, and notice requirements must be applied flexibly in relation to children. Breaches of rules should not result in criminal sanctions or any other type of sanction for children or their parents, and where children are charged for incidents such as violence or damage to property, they must be dealt with in child justice systems compliant with articles 37 and 40 of the Convention on the Rights of the Child.

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²¹ Consider adding as a reference: *Mlungwana v S* (CCT32/18) [2018] ZACC 45, para 72.