Human Rights Committee

**125th session,** 4- 29 March 2019

**Half-day general discussion**, 20 March 2019

 Issues for consideration during a half-day general discussion in preparation for a General Comment on article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights

 Note by the Rapporteur

 Background

1. The Human Rights Committee, in accordance with article 40, paragraph 4, of the International Covenant on Civil and Political Rights, and Rule 76 of its Rules of Procedure, is mandated to prepare general comments on the various articles and provisions of the Covenant with a view to assisting States parties in fulfilling their obligations under the Covenant.

2. **The Human Rights Committee decided at its 124th session (8 October – 2 November 2018) to develop a General Comment on article 21 of the International Covenant on Civil and Political Rights, in the light of experience obtained in the review of State reports and communications on this right.** The Committee designated Christof Heyns as the Rapporteur for the drafting of the General Comment.

3. Article 21 of the ICCPR provides as follows:

‘The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right 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.’

4. To start this process, the Committee is inviting national human rights institutions, civil society, academia and international organizations to provide relevant information to be taken into consideration by the Committee during the preparation of the first draft that will be submitted to States and others stakeholders for comments. Interested parties are invited to participate in this consultation process by commenting on the questions raised below, or by making submissions on any other aspects of article 21 that they deem relevant. **This can be done by means of written submissions, to be provided to the Committee by 4 March 2019. The Committee will also hold half a day of oral consultations during its 125th session in Geneva on 20 March 2019from10h00 – 13h00.**

 Questions for discussion

The list of questions below is illustrative, not exhaustive. It reflects some of the main aspects which the Rapporteur plans to cover in the first draft of the General Comment. Stakeholders are invited to draw attention to aspects not listed below.

 Questions directly related to article 21

1. What are the unique features of the right to peaceful assembly, which distinguishes it from other related rights such as freedom of expression and political participation?

*It is a collective right. It is a right that more than any other right interacts with public order.*

What is the function, added value and rationale for this right in a social system based on democracy and human rights? Does the scope of the right differ depending on the context (for example, is it the same during political transitions)?

*It is a way for anyone, including special interest groups, civil society and minorities, to actively participate and influence public debate, without the direct involvement of politics.*

*For the government it makes visible the issues that people find important enough to demonstrate for and determine thereby if the issue needs te be addressed. It is also a way to express (ventiel) concerns in a democratic and peaceful manner instead of other less democratic means. The right to peaceful assembly is a unique and relatively simple way to release pressure, generate media attention and to put issues on the political agenda.*

1. How should the term ‘peaceful assembly’ be understood?

*An assembly can be peaceful and be disturbing at the same time. An assembly should do no harm to others and no fear should be created to others. More so no criminal behaviour and public disorder should be actively inflated by the assembly. One peaceful assembly should also not be a danger to another peaceful assembly.*

When is one dealing with an ‘assembly’? Does it require the expression of an idea through a gathering, and if so, what is the hallmark of such an expression of an idea (e.g. does it necessarily entail an appeal to the public opinion)?

*When two or more persons are gathered to address a collective opinion in public space*

Does it cover strikes?

*No*

Or do all gatherings (e.g., also sporting, religious, cultural events, or) qualify as ‘assemblies’? Does it matter whether the organizers pursue a commercial interest?

*If the primary goal is commercial or entertainment, than the position is that this is not an assembly.*

In order to qualify as an assembly, are there requirements about where should the gathering should take place – in public, private or on-line?

*A gathering should take part of-line in public space. The freedom of speech on-line and in private space is safeguarded by the rights of expression.*

Can one person form an assembly?

*From a legal standpoint, no. This is safeguarded under the freedom of expression.*

When is an assembly not ‘peaceful’, and fall outside the scope of the protection of the particular right? What level of violence (or mere disruption?) is required not to consider it peaceful?

*See 2.*

To what extent can the violent conduct of certain individuals participating in the assembly be attributed to the group as a whole and render an assembly as a whole not peaceful?

*A protester is not above the law. A criminal conduct of one person, in general cannot be attributed to the group as a whole.*

1. Is freedom of assembly an individual or a collective right, or both? Who is the bearer of the right? The participants – individually or collectively? The organizers?

*Both. It is a collective right for the group to demonstrate and an individual right to participate in the assembly. The organiser has the primary responsibility for a peaceful assembly.*

1. Does the right cover planning/publication/advertisement of the event, and if so when does this start - before notification or other similar requirements have been met?

*The publication/advertisement of the event is covered by the right of free press. The planning of an event is not explicitly covered by Dutch law.*

Does the right cover protection of participants on their way to and from an assembly?

*This should be part of the protection and is safeguarded when necessary.*

1. Article 2 (1) of the ICCPR requires States to ‘respect and ensure’ the rights in the ICCPR. Article 21 provides that the right of peaceful assembly ‘shall be recognised’. Does this in general terms mean that there is a duty on the State to ‘facilitate’ peaceful assembly, and what does such a duty to ‘facilitate’ entail?

*To facilitate means within this context that the assembly should be protected if necessary and no disproportional formal barriers should be upheld by the government.*

Does it mean that, while people exercise this right, the focus of law enforcement officials should be primarily on protecting the rights of all concerned rather than upholding law and order? (Are States thus required to show a certain level of tolerance to conduct when engaged in as part of peaceful assembly, and not meet it with the same force of the law as it would otherwise do?)

*The focus should be on protecting the fundamental rights of all.*

How should the obligation to allow assemblies to take place within ‘sight and sound’ of its target audience be interpreted?

*As literally as possible, but taking into consideration that you need to avoid a physical confrontation.*

1. More specifically, what are the (negative and positive) obligations placed by the right of peaceful assembly on the State? How should the right be *respected* by the State (e.g. through the adoption of laws providing for and regulating its exercise in accordance with international law)? How should it be *protected*? To what extent does the State have an obligation to protect those engaged in peaceful assembly from interference by other members of the public?

*The organiser has the primary responsibility to make sure the assembly is peaceful. If for some reason this responsibility cannot be (fully) met, the government is obliged to take part of this responsibility.*

And should counter-demonstrations be protected to the same extent?

*If the counter demonstration is aimed at addressing a different viewpoint and not focussed on disturbing the other assembly, it is.*

How should the obligation on States to take precautionary measures to prevent violations of rights be understood in this context (for example in the context of preventing and reducing violence)?

*Making arrangements at fore hand and police presence that is focussed on dialogue and de-escalation.*

Is there an obligation on the part of the authorities to attempt to engage with assembly organisers and participants prior to the holding of the assembly?

*This is not so much an obligation as it is a necessity in the preparation of risk full assemblies.*

Are organisers required to engage with the authorities?

*No obligation*

Is there a special role for NHRIs in this regard?

*NHRI’s can have a monitoring role.*

And other stakeholders (such as local governments)?

*The local government is leading as the Mayor is responsible for the exercise of the law that stipulates the freedom of Assembly. The local government together with the police is most of the time most in touch with the local community*

1. When and how may the right of peaceful assembly be limited?

*Before in writing or during and only by law.*

1. Are the limitations affected by the modalities of the assembly (e.g. whether they take place in the open or within a building, whether they are stationary gatherings or marches)?

*In general you can state that limitations may be placed only when they are based on formal law and only when this is necessary for traffic, health and public order reasons, regardless of the modalities.*

Is it correct to say there is a ‘presumption’ under the Covenant in favour of allowing peaceful assemblies, and the onus is on those wishing to restrict such assemblies to justify such limitations?

*Yes*

 How should the procedural requirement for limitations on the right in sentence two of article 21 (that limitations can only be imposed ‘by law’) and the substantive requirements (this can be done only where it is necessary to protect national security, etc.) be understood?

*Restrictions may be placed only when they are based on formal law and only when this is necessary for traffic, health and public order reasons and other measures (police presence) to protect these interests will not be sufficient.*

What is their relationship to other articles of the Covenant, including article 22? In what way are the limits on article 21 different from the limits of article 19?

*The freedom of speech cannot be restricted beforehand. The freedom of assembly sometimes can.*

How should such limitations be enforced – is there e.g. a role for criminal sanctions, and if so when? What are the alternatives? Who can be held criminally responsible for violent conduct of individuals or groups that participate?

*A demonstrator is not above the law. The normal criminal law proceedings should be adapted, when criminal behaviour is identified. The demonstration as a whole should not be influenced by vindicating criminal law.*

What are the safeguards that should be in place to establish whether limitations on peaceful assemblies are permissible (e.g. judicial review)? What does an ‘effective remedy’ mean in time sensitive contexts? How can transparency of decision-making in relation to assemblies be ensured?

*Decisions that involve restrictions are always subject to appeal by court. The court can also be asked to suspend a restriction. This can be done 24/7 and before the assembly takes place.*

7. What is the position as far as organiser accountability is concerned? Can the organisers be required to cover police costs, provide assurances in advance as far as reparations for damages are concerned, cleaning up services, medical services, etc.?

*No police costs should be covered by the organisers. Organisers are obliged to leave the demonstration location clean and undamaged; If there are damages they can be held accountable. In the exceptional situation that an organiser proved to have made damages in the past, and it is likely this will happen again, assurances in advance can be required on these objects that not part of the freedom of assembly but are linked to it; for example the building permit for the stage.*

Do particular obligations arise for organisers where participants in an assembly (including counter-demonstrations) intentionally advocate hatred, seek to intimidate others or call for or use force?

*If the expressions are within the law, also these assemblies are protected by the freedom of assembly.*

How should concealment of their faces by participants be dealt with?

*Preferably a demonstrator should never feel that he should conceal his or her face. In some circumstances concealment is understandable. For example prostitutes demonstrating for a better position in society. If concealment is not a way to anonymously act aggressively or criminal, there is no reason to object to concealment of faces.*

1. Should those wishing to exercise this right be required to apply for authorisation; or merely be required to notify the authorities; and if the latter, what form should the notification take (how onerous can expectations of notification be: how long in advance; does this apply to spontaneous assemblies (and how are they to be defined); etc.)?

*Notification is obliged (24 hours notice) for all assemblies and in the city of Amsterdam this is a digital form 24/7. This is no request for authorisation.*

Is a system of voluntary notification workable?

*To fulfil the legal protection of assemblies, the government should have knowledge at forehand of the upcoming assembly. That is why the notification is obliged. If an assembly is not (on time) notified is this is not a sole reason to prohibit the assembly.*

Are there international standards for establishing which assemblies need to be free from all requirements of notification and authorization; which the former and which the latter?

9. What sort of limitations may be placed on assemblies as far as their form (e.g. place, manner and time) or their contents (e.g. promotion of violence) is concerned?

*Limitations should never be on content but on manner (march or at one place), place and time.*

Are there circumstances under which all peaceful assemblies may be prohibited for a certain period in connection with states of emergencies, or independently of states of emergency? Can all assemblies in particular places (e.g. ‘neutral zones’ around parliaments, courts or monuments) or during a specific time be prohibited?

*The only reason to prohibit assemblies is the threat of public disorder, health or traffic. These threats should be so severe that they cannot be dealt with via police presence. There are no specific exceptions for particular places except for diplomatic buildings. They should always be able to function safely.*

10. To what extent have general rules and good practices emerged on the facilitation of assemblies, to prevent an escalation of the situation, for example by not taking measures that might increase tensions, requiring law enforcement officials to be identifiable, etc.?

*General rules and good practices are collected by the City of Amsterdam and available in Dutch* [*www.amsterdam.nl/bijkansheilig*](http://www.amsterdam.nl/bijkansheilig)*. We are currently developing an international English version of this handbook.*

How should the division of labour between the police and marshals be determined?

*Not applicable for the Netherlands.*

What is the role of undercover policing?

*It is not widely used in Amsterdam. Sometimes it helps to detect violent intentions at forehand.*

11. What are the rules as far as the use of coercive measures against those engaged in assemblies is concerned, also if they turn violent? This includes detention, arrest and the use of force (articles 6, 7 and 9 of the ICCPR). How should the requirements of legality, precaution, necessity and proportionality in the context of the use of force be understood?

*A demonstrator is not above the law. The normal criminal law proceedings should be adapted, when criminal behaviour is identified. The demonstration as a whole should not be influenced by vindicating criminal law.*

What is the role of the various forms less-lethal weapons and equipment that are available, and how should they be regulated?

*Some equipment as the water canon, but also the use of the riot police can only be executed after an explicit request to the Mayor.*

May some such weapons never be used, or only under certain circumstances?

Horses and dogs?

*Preferably not. Especially dogs are not helping to de-escalate.*

Firearms?

*Only in case of live threatening situations.*

Private security providers?

*Not generally in public space. They could get a facilitating role in other for public accessible locations as airports, universities, etc. Organisers of assemblies could hire private security providers or traffic controllers.*

Can dispersal ever be justified where an assembly is entirely peaceful/non-coercive?

*Only in case of an emergency (e.g. bomb threat)*

What are the alternatives to dispersal?

*Transporting the demonstrators to a safe place in case of an emergency.*

12. What are the rights of those who wish to observe and record assemblies and how they are policed, including participants, bystanders and the media?

*The freedom of press should be protected at all times.*

13. How should accountability for violations or abuses of rights by all parties concerned during assemblies be approached?

*A demonstrator is not above the law. The normal criminal law proceedings should be adapted, when criminal behaviour is identified. The demonstration as a whole should not be influenced by vindicating criminal law.*

14. To what extent are private actors (including the owners of shopping centres) required to allow of facilitate peaceful assemblies? How should the responsibility of States in such situations be approached? How should public places (partly) owned by a State company (e.g. airports) be treated?

*The law on peaceful assemblies applies for all public accessible locations in the Netherlands*

 Relationship of article 21 with other provisions of the ICCPR

15. When may derogations (article 4) and reservations to article 21 be permitted and what non-derogable or otherwise fixed obligations in relation to assemblies do States retain where that is the case?

*Derogations and reservations may only be in order when they are based on formal law and only when this is necessary for traffic, health and public order reasons and other measures (e.g. police presence) to protect these interests will not be sufficient.*

16. Is it correct to say that ‘there is no such thing as an unprotected assembly’ because even if the assembly is no longer peaceful, those involved retain their other rights, such as their rights against ill-treatment and the right to life?

*Yes.*

17. What is the relationship between article 21 and other rights in the ICCPR, such as privacy (article 17); freedom of movement (article 12) freedom of expression and access to information (article 19); advocacy of hatred etc. (article 20); association (article 22); political participation (article 25); and equality and non-discrimination (articles 2 (1); 3; 26) (e.g. people who are frequently targeted, or in positions of vulnerability).

*These rights are all applicable also during an assembly. Taking into account that you are allowed to film people in public space –a also during assemblies - and that this can be felt as a breach of privacy.*

 General

18. In interpreting article 21 of the ICCPR, should any weight be attached to possible differences between the right of peaceful assembly (*droit de réunion*); peaceful demonstration (or peaceful protest) (*droit de manifestation*) and the right of peaceful gathering (*droit de rassemblement*)?

*It should apply to a collective expression in public space. If the primary goal of the assembly is commercial or entertainment, than the position is that this is not an assembly that is fully safeguarded by international law.*

19. In all of the above please keep in mind the role of gender in assemblies and the role of new technologies: the use of social media to organise and advertise assemblies; the use of mobile phones and other devices (CCTV cameras, satellites) to record assemblies; the use of body-worn cameras; etc. Moreover, to what extent does the right of peaceful assembly apply in the digital space? Can ‘gathering’ online impose obligations on States and other actors to facilitate it?

*The freedom of speech applies to online as no real gathering can take place.*

May unmanned weapon or surveillance systems (remote or autonomous) be used by law enforcement officials during demonstrations?

*Camera’s are being used for criminal investigation.*

20. Please identify ‘soft-law’ instruments that may be of relevance to the right of peaceful assembly. References to regional standards are also welcome.

*Amsterdam produced a handbook on demonstrations available in Dutch at* [*www.amsterdam.nl/bijkansheilig*](http://www.amsterdam.nl/bijkansheilig) *We are currently developing an international English version of this handbook.*