**19 February 2020**

To: The United Nations Human Rights Committee

**Persons with Disabilities and the Right to Freedom of Assemblies**

 ***Comment Submitted for Consideration in Preparation of the Revised Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights.***

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**Introduction**

The author would like to thank the UN Human Rights Committee (HRC) for availing this opportunity to all concerned stakeholders to provide feedback on Draft General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights (ICCPR), hereinafter referred to as the ‘Draft General Comment’.[[1]](#footnote-1) This submission is hereby made having read in-depth and noticed that the Draft General Comment, in its present version, falls significantly short of enunciating and bringing to the attention of States Parties the ongoing pervasive challenges faced by persons with disabilities to exercise their fundamental right to peaceful assemblies in both developing and developed nations.

It goes without saying, over the past three decades in particular, peaceful assemblies and civil protests by persons with disabilities (PWDs) across the globe - be it north or south - played not only pivotal but indispensable role in enabling the contemporary rights-based model of disability to set sail. Cases in point, *inter alia*, include the Rehabilitation International (RI) World Congress of 1980 held in Winnipeg, Canada, which faced an unprecedented resistance from PWDs due to nominal representation of the global disability constituency within the Congress and led forthwith to establishment the first global association by PWDs themselves, known as Disabled Peoples’ International (DPI).[[2]](#footnote-2) Another seminal instance is the Americans with Disabilities Act (ADA). Evidence attests to the fact that the ADA came about not as a result of the goodwill nor benevolence of U.S. legislatures, but as a tipping-point of years of relentless peaceful protests by Americans with disabilities, ranging from the ‘Rolling Quads’ of Berkeley to the ‘504 Sit-ins’ where PWDs simultaneously occupied federal buildings leading to enactment of the first disability public policy in the United States, i.e., Section 504 of the 1973 Rehabilitation Act – precursor of the ADA.[[3]](#footnote-3) In her account of these events, Mayerson (1992) recalls that:

Like the African-Americans who sat in at segregated lunch counters and refused to move to the back of the bus, people with disabilities sat in federal buildings, obstructed the movement of inaccessible buses, and marched through the streets to protest injustice. And like the civil rights movements before it, the disability rights movement sought justice in the courts and in the halls of Congress.[[4]](#footnote-4)

One may go on and on citing a plethora of such anecdotes demonstrating how and why the right to peaceful assembly is just as cornerstone, if not more so, to PWDs in the developed and developing world as it is to non-disabled constituencies alike.

**Normative Framework: in a Nutshell**

The United Nations declared 1981 as the International Year of Persons with Disabilities (IYPD) in General Assembly Resolution 31/123, and the years 1983-1992 as International Decade of Persons with Disabilities (IDPD).[[5]](#footnote-5) Subsequently, milestone declarations providing definitional and guiding framework to the notion of disability from a rights-based vantage point were introduced,[[6]](#footnote-6) culminating with the 2006 Convention on the Rights of Persons with Disabilities (CRPD) which, in no ambiguous terms, emphasized *inter alia* the rights to freedom of expression, peaceful assembly and association as enshrined in articles 19, 21 and 22 of the ICCPR. In addition to the *erga omnes* obligations of non-discrimination, respect for inherent dignity and general principles stipulated, respectively, in articles 3(a)(b), 4(d)(e) and 5 of the CRPD requiring both state and private actors to “refrain from any act or practice” inconsistent with the Convention, the following provisions of the same are directly pertinent to the subject at hand: Art. 19 (inclusion in the community), Art. 21 (freedom of expression, opinion and access to information) and Art. 29 (participation in political and public life). The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, underscored in his reports to the Human Rights Council (HRC) that PWDs come on top of the “most at risk” in terms of their level of marginalization in the exercise of the rights to freedom of peaceful assembly and of association.[[7]](#footnote-7) Salient “difficulties” faced by individuals with disabilities in staging peaceful assemblies, exacerbated by States Parties’ inaction, are enunciated in the Special Rapporteur’s report as follows:

Individuals with disabilities frequently face difficulty in staging peaceful assemblies due to limitations related to their disabilities. Those obstacles include the inability to gain access to the forms and notification procedures (for example, due to a lack of regulations or forms in Braille or other accessible formats) and to Government offices where a notification of assembly may be lodged. In that respect, the Special Rapporteur urges States to strive for implementation of article 19 of the Convention on the Rights of Persons with Disabilities, which called for States to recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and to take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of that right and their full inclusion and participation in the community.[[8]](#footnote-8)

What is more, actions perpetrated by law enforcement and national legal provisions contravening the meaningful exercise of PWDs’ right to peaceful assemblies, including but not limited to, physical barriers on public buildings and amenities, disability-unfriendly distances to official permitted gathering spaces, communication hindrances and practices of containing assemblies, e.g., ‘kittling’, are emphasized by the Special Rapporteur as “particularly detrimental to individuals with disabilities”.[[9]](#footnote-9) To this end, the Special Rapporteur’s report and other normative standards, e.g., the European Commission for Democracy through Law (the Venice Commission) *Guidelines on Freedom of Peaceful Assembly* and the African Human and Peoples’ Rights (ACHPR) *Guidelines on Freedom of Association and Assembly in Africa* and the *Worldwide Web Content Accessibility Guidelines (WCAG)* call upon States to apply their positive duties through, *inter alia*:

[F]acilitating assemblies associated with individuals and groups that have historically faced discrimination, or are otherwise marginalized or at risk. In doing so, the State should address specific needs and challenges confronting those persons or groups before, during and after assemblies [and ensure] special protection measures developed in consultation with persons at risk, such as early warning systems to trigger the launch of protective measures, and public statements in advance of assemblies to advocate, without ambiguity, a tolerant, conciliatory stance.[[10]](#footnote-10)

Important reference is also made in some of the aforementioned normative standards to the clear distinction between *legal capacity* and *mental capacity* vis-à-vis implications thereof on one’s right to peaceful assembly, as has been particularly elaborated by the Committee on the Rights of PWDs - treaty body of the CRPD - in General Comment 1 (equal recognition before the law, Article 12 of the Convention) wherein the Committee asserted:

Legal capacity and mental capacity are distinct concepts. Legal capacity is the ability to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency). It is the key to accessing meaningful participation in society. Mental capacity refers to the decision-making skills of a person, which naturally vary from one person to another and may be different for a given person depending on many factors, including environmental and social factors. [...] Article 12 of the Convention on the Rights of Persons with Disabilities, however, makes it clear that “unsoundedness of mind” and other discriminatory labels are not legitimate reasons for the denial of legal capacity (both legal standing and legal agency).[[11]](#footnote-11)

The ACHPR *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa* of 2014 (also known as the *Luanda Guidelines*) reiterate similar duties discussed in the preceding instruments with a specific focus on conditions of detention and arrest of PWDs, including the obligation to ensure that disciplinary actions on PWDs, where lawful, must be cognizant of the latter’s disability.[[12]](#footnote-12)

**The Status Quo**

Contrary to these and multiple other legal safeguards in place, PWDs to this day continue to undergo widespread persecution, not least at the very hands of law enforcement officers, for simply exercising their right to peaceful assembly, as if they are not entitled thereto. More often than not, this is the case notwithstanding which country, region, race as well as what disabilities the protestors may belong to. Below are just a few manifestations of this status quo.

In May 2019, a national news broadcaster in Kenya showed verified footages of the country’s police officers beating and inhumanely handling civil demonstrators with disabilities using batons as members of the Kenya Paralympics Team protested against unpaid allowances.[[13]](#footnote-13) A viral, confirmed, image of the London police in the United Kingdom confiscating wheelchairs and ramps of PWDs partaking in climate change protests was a major talking point as recently as again 2019.[[14]](#footnote-14) In the United States, it has become nearly a cliché to witness gruesome images of arrests and dispersion of protesters with disabilities such as that which took place within the premises of Senate Majority Leader, Mitch McConnell’s, Office in 2017 when Americans with disabilities opposed the new Republican healthcare bill.[[15]](#footnote-15) In December 2019, Indian police were seen bundling twenty-five protestors with disabilities into buses right outside a State Minister’s house for requesting to meet the Minister, and then the protestors were dropped at a location where they could not access transport for ten days to return back home.[[16]](#footnote-16)

These, as already stated, are but only a few examples of what the status quo, to date, looks like.

**Summing up and Recommendations**

The present Draft General Comment 37 has barely alluded to disability and salient struggles that PWDs go through - almost on a routine basis - in the exercise of their right to freedom of assemblies protected under international as well as national human rights laws. The sole paragraph that makes a rather ‘catch-all’ reference to disability in the Draft General Comment, i.e., paragraph 28, reads:

“States must not deal with assemblies in a discriminatory manner, for example on the basis of nationality, race, ethnicity, age, political opinion, religion, belief, minority status, *disability*, sexual orientation or gender identity. Particular efforts should be made to ensure equal and effective protection of the right of peaceful assembly of *individuals who are members of groups who are or have been subjected to discrimination*.[[17]](#footnote-17) (emphasis mine)

Unlike, for example, various reports of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association as well as other mechanisms, Draft General Comment 37 falls noticeably short of peculiar perspectives based on which States Parties shall take a heightened responsibility to respect, protect, promote and fulfill the right of PWDs in their jurisdiction to peaceful assemblies. This limitation of the Draft General Comment extends to due diligence obligations holding non-state actors too into account apropos the right in question.

It is therefore recommended, with due emphasis, that subsequent drafts and/or final version of General Comment 37 consider:

1. Adding a dedicated paragraph, in the *General Remarks* segment, expressly addressing frequent issues that PWDs, individuals and groups ‘most at risk’ grapple with in applying their right to peaceful assembly, as elaborated above in this submission.
2. Further unpacking the current paragraph 28, beyond a mere list of prohibited grounds of discrimination, to include concrete details as to how and why such discrimination can be curbed on the basis of, *inter alia*, recommendations made by UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.
1. Full version of Draft General Comment 37, available at <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx> [↑](#footnote-ref-1)
2. Watermeyer, B.: Towards a Contextual Psychology of Disablism, 1st Edition (Routledge, London, 2012). [↑](#footnote-ref-2)
3. Meyerson, Arlene. *The History of the Americans with Disabilities Act: A Movement Perspective* (1992). The Disability Rights Education and Defense Fund (DREDF), p.2 [↑](#footnote-ref-3)
4. *Ibid.* [↑](#footnote-ref-4)
5. UN General Assembly Resolution 37/52. *World Programme of Action concerning Disabled Persons* (1982).Available at <https://undocs.org/A/RES/37/52> [accessed 2 June 2019] [↑](#footnote-ref-5)
6. E.g., The *Tallinn Guidelines for Action on Human Resources Development in the Field of Disability* (1989). The *Standard Rules on Equalization of Opportunities for Persons with Disabilities* (1993) - General Assembly Resolution A/RES/48/96. The Standard Rules also created the *UN Special Rapporteur on Disability*, established by the General Assembly in 1994, within the auspices of the Commission for Social Development. The *World Programme of Action concerning Disabled Persons*, adopted on 3 December 1982 by General Assembly Resolution 37/52. [↑](#footnote-ref-6)
7. *See*, e.g., UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, 14 April 2014, A/HRC/26/29, available at: https://www.refworld.org/docid/539063984.html [accessed 4 January 2020] [↑](#footnote-ref-7)
8. *Ibid.*, para. 34 [↑](#footnote-ref-8)
9. *Ibid.*, para 40 [↑](#footnote-ref-9)
10. European Commission for Democracy through Law (Venice Commission), OSCE/Office for Democratic Institutions and Human Rights (OSCE/ODIHR). *Guidelines on Freedom of Peaceful Assembly, 3rd Edition* (2019), para. 84. Also see the African Commission on Human and People’s Rights (ACHPR), *Guidelines on Freedom of Association and Assembly in Africa* (2017), para. 26. [↑](#footnote-ref-10)
11. UN Committee on the Rights of Persons with Disabilities, General Comment No. 1, *on CRPD Article 12: Equal Recognition before the Law* (19 May 2014, CRPD/C/GC/1, Geneva), para. 13. Available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement (accessed 14 February 2020). [↑](#footnote-ref-11)
12. African Commission on Human and Peoples' Rights, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Afric*a, 28 July 2016, available at: https://www.refworld.org/docid/5799fac04.html (accessed 12 February 2020) [↑](#footnote-ref-12)
13. *See*, e.g. Standard Digital (Kenyan news outlet), “*How should police arrest persons with disabilities?”* News broadcast, dated 9th June 2019. Available at <https://www.standardmedia.co.ke/article/2001329056/how-should-police-arrest-persons-with-disabilities> [accessed 20 October 2019] [↑](#footnote-ref-13)
14. *See*, e.g. “*Disabled protesters demand return of wheelchairs and ramps ‘confiscated by police’*.” Metro news and Reuters, 13 October 2019. Available at <https://metro.co.uk/2019/10/13/disabled-protesters-demand-return-wheelchairs-ramps-confiscated-police-10912185/?ito=cbshare> **soctoralesto peaceful assemblyesl Commenty su- scriminationComment**accessed 6 January 2020].**soctoralesto peaceful assemblyesl Commenty su- scriminationComment** [↑](#footnote-ref-14)
15. The Washington Post, “*Disability advocates arrested during health care protest at McConnell’s office”,* June 22, 2017. *See* <https://www.washingtonpost.com/local/public-safety/disability-advocates-arrested-during-health-care-protest-at-mcconnells-office/2017/06/22/f5dd9992-576f-11e7-ba90-f5875b7d1876_story.html> [↑](#footnote-ref-15)
16. The Times of India, “*Disabled protesters detained outside railway minister's house”*, 6 December 2019. *See*
<http://timesofindia.indiatimes.com/articleshow/72395496.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst>**soctoralesto peaceful assemblyesl Commenty su- scriminationComment** [↑](#footnote-ref-16)
17. *Supra* note 1, para. 28 [↑](#footnote-ref-17)