**EELC COMMENT ON THE DRAFT GENERAL COMMENT NO. 37 TO ARTICLE 21 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS:**

**THE RIGHT TO PEACEFUL ASSEMBLY**

1. The Equal Education Law Centre (**‘EELC’**) is a public interest law clinic based in Cape Town, South Africa. The EELC regularly provides legal support to child activists who work to advance campaigns for education justice in the country.
2. At the invitation of the United Nations Human Rights Committee (**‘HRC’**), in March 2019 the EELC made both written[[1]](#footnote-1) and oral submissions on the drafting of the General Comment (**‘General Comment’**) to Article 21 of the International Covenant on Civil and Political Rights (‘**Article 21 of the ICCPR’**). We refer to these as “**the EELC’s initial submissions**”.
3. In November 2019, the HRC released a revised draft General Comment as adopted on First Reading during the 127th Session (14 October – 8 November 2019) (“**the Draft General Comment**”).  The HRC invited comments from interested parties with an initial deadline of 7 February 2020, which was then extended to 21 February 2020.
4. The EELC’s initial submissions highlighted the need to specifically cater for the right of children to peaceful assembly.
5. The EELC welcomes the draft General Comment expressly recognising that the right to peaceful assembly is also applicable to children.[[2]](#footnote-2) This recognition reinforces the importance of the right in relation to children, as provided for by the UN Convention on the Rights of the Child, and the direct link between the right to peaceful assembly and children’s freedom of expression, association and political participation.
6. The EELC would urge that the General Comment go further in highlighting the unique needs of children in exercising the right to peaceful assembly. As the General Comment will also give guidance to the right to peaceful assembly as protected by other international law instruments, such as the UNCRC, we urge the HRC to take this opportunity to clarify the importance and implications of the right to peaceful assembly for children.
7. In this submission, we make specific recommendations on where the Draft General Comment could be developed so as to expressly take into account the nature and implications of the right to peaceful assembly for children.

**Obligations of State parties in respect of the right to peaceful assembly**

1. The EELC welcomes the draft General Comment’s reiteration that State parties have an obligation to facilitate the effective exercise of assembly rights by creating an enabling environment.
2. We note that the draft General Comment recognises that groups and individuals who have historically experienced discrimination may require special protections for their peaceful assemblies.[[3]](#footnote-3)
3. In light of the importance of peaceful assembly as the most potent means for children’s participation in the political life of societies, the General Comment should recognise children as a category of vulnerable persons whose assemblies require special protection.
4. More specifically, we recommend the following insertion:

“*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 or who by virtue of their age or other status are particularly vulnerable. This includes the duty to protect participants from homophobic, sexual or gender-based attacks*.” (Emphasis on recommended insertion)

**Restrictions on the right of peaceful assembly**

1. The EELC welcomes the draft General Comment’s emphasis on the presumption against restrictions on the right to peaceful assembly, and that the onus for justifying restrictions falls on authorities.[[4]](#footnote-4)
2. The EELC notes that, compared to the first draft of the General Comment released by the Special Rapporteur,[[5]](#footnote-5) the revised draft General Comment has removed specific recognition that restrictions on the right to peaceful assembly should not be aimed at particular categories of participants including on the basis of age.[[6]](#footnote-6)
3. We would therefore recommend the following insertion at paragraph 54 of the draft General Comment:

“*In addition to the general framework for restrictions provided for in article 21 as discussed above, a number of additional considerations are relevant to restrictions on the right of peaceful assembly….A contrary approach defeats the very purpose of peaceful assemblies as a tool of political and social participation aimed at allowing members of the population to advance ideas and establish the extent of support that exists for them.* *Moreover, restrictions must not be aimed specifically at particular categories of potential participants, for example on the basis of nationality, race, ethnicity, age, political opinion, sexual orientation or gender identity.*” (Emphasis on recommended insertion)

1. In addition, the EELC recommends that the draft General Comment specifically note that the imposition of any criminal or administrative sanctions against child participants in assemblies, even when there are violations of the law, should be a measure of last resort. More specifically, the EELC recommends the following insertion at paragraph 76 of the draft General Comment:

“*Where criminal or administrative sanctions are used against participants in a peaceful assembly, such sanctions must be proportionate and cannot apply where their conduct is protected by the right.* *The imposition of criminal or administrative sanctions against child participants in assemblies should only be a measure of last resort.*” (Emphasis on recommended insertion)

**Notification**

1. The EELC welcomes the draft General Comment’s emphasis that any notification must allow facilitation of the right to peaceful assembly or be for the protection of the rights of others.[[7]](#footnote-7) We further welcome the distinctions drawn between notification and authorisation systems.[[8]](#footnote-8)
2. In light of the draft General Comment’s recognition that notification processes should not be unduly burdensome,[[9]](#footnote-9) the EELC urges that the General Comment go further to emphasise that the unique needs and interests of children require particularly accessible processes and procedures.
3. We therefore recommend that the General Comment specifically notes the need for accessible notification processes for children, including mechanisms such as verbal notification. In particular, the EELC recommends the following insertion at paragraph 80 of the draft General Comment:

“*…Notification procedures should not be unduly burdensome and must be proportionate to the potential public impact of the assembly concerned. Notification procedures for children must be particularly accessible and make an allowance for verbal notification.*” (Emphasis on recommended insertion)

**Duties and powers of law enforcement agencies**

1. The EELC welcomes the draft General Comment’s detailed emphasis on the roles and responsibilities of law enforcement agencies in enabling and facilitating the right to peaceful assembly.
2. We reiterate that for children, the impact of the actions of law enforcement agencies can be real and damaging.
3. We welcome the draft General Comment’s statement that law enforcement officials should be trained in the policing of assemblies.[[10]](#footnote-10) We recommend that the General Comment specifically note the need for such training to include sensitivity toward the rights and interests of special groups, particularly children, when managing assemblies.
4. More specifically, we recommend the following insertion at paragraph 92 of the draft General Comment:

“*Wherever possible, only law enforcement officials who have been trained in the policing of assemblies should be deployed for that purpose. Such training should include recognition of the need for sensitivity toward the rights and interests of special groups, particularly children, when managing assemblies.*”

**Conclusion**

1. The EELC appreciates that the draft General Comment has recognized that the right to peaceful assembly extends to children.
2. However, we have pointed to areas where further and more specific attention could be drawn to the unique needs of children. We therefore hope that further revisions of the draft will incorporate the recommendations in the EELC’s initial submission as well as in this further comment.

**Submitted by the Equal Education Law Centre**

**Contact details:**

Nurina Ally: [nurina@eelawcentre.org.za](mailto:nurina@eelawcentre.org.za)

Astrid Coombes: [astrid@eelawcentre.org.za](mailto:astrid@eelawcentre.org.za)

Sipho Mzakwe: [sipho@eelawcentre.org.za](mailto:sipho@eelawcentre.org.za)

Chandre Stuurman: [chandre@eelawcentre.org.za](mailto:chandre@eelawcentre.org.za)

1. See Equal Education Law Centre written submission *‘Children and the Right to Peaceful Assembly’* available here: <https://eelawcentre.org.za/wp-content/uploads/eelc_submission_hrc_27.02.2019_final-1.pdf>. [↑](#footnote-ref-1)
2. Draft General Comment, paragraph 5. [↑](#footnote-ref-2)
3. Draft General Comment, paragraph 28. [↑](#footnote-ref-3)
4. Draft General Comment, paragraph 40. [↑](#footnote-ref-4)
5. First draft of the General Comment released by the Special Rapporteur in June 2019 (“First Draft General Comment”). [↑](#footnote-ref-5)
6. First Draft General Comment, paragraph 45. [↑](#footnote-ref-6)
7. Draft General Comment, paragraph 80. [↑](#footnote-ref-7)
8. Draft General Comment paragraph 80. [↑](#footnote-ref-8)
9. Draft General Comment, paragraph 80. [↑](#footnote-ref-9)
10. Draft General Comment, paragraph 92. [↑](#footnote-ref-10)