



PRIVACY INTERNATIONAL
COMMENTS ON THE DRAFT GENERAL COMMENT NO. 37
AS ADOPTED BY THE HUMAN RIGHTS COMMITTEE
IN THE FIRST READING

19 February 2020

Introduction

1. Privacy International (PI) welcomes the Human Rights Committee's ("the Committee") release of the revised Draft General Comment no. 37 on the right of peaceful assembly as adopted by the Committee in the first reading ("the Draft General Comment").
2. PI has followed closely and participated in the deliberating process that led to this significant outcome. Particularly, PI submitted a written contribution in advance of the half-day general discussion on the matter held by the Committee in the course of its 135th session last year and was part of the half-day discussion.
3. Through its initial submission, PI aimed to provide the Committee with information on how surveillance technologies are affecting the right to peaceful assembly in new and often unregulated ways.¹ The submission highlighted the close relationship between the right to peaceful assembly and the right to privacy; gave examples of recent technologies used to suppress peaceful assemblies and the challenges to the right to peaceful assembly online.
4. We are pleased to note that the Draft General Comment now incorporates most of the points PI raised. Over the past years, our ability to assemble and protest peacefully has been attacked by unregulated uses of surveillance technologies that not only violate peoples' right to privacy but also severely hinder their ability to freely communicate, organise, and assemble with others.² Recent protests across the globe

¹ PI, Submission on Article 21 of the International Covenant on Civil and Political Rights, February 2019, available at https://privacyinternational.org/sites/default/files/2019-03/Submission%20on%20Article%2021%20of%20ICCPR_0.pdf.

² PI, Protecting civic spaces, May 2019 available at <https://privacyinternational.org/long-read/2852/protecting-civic-spaces>.

– Chile, Bolivia, Guinea, Lebanon, Iraq, Hong Kong just to name a few – have been a testimony to that effect.

5. The Committee’s undertaking to develop a new General Comment on the right of peaceful assembly is very timely in that respect. The Committee thus contributes to the codification and progressive development of international human rights law.

General remark on the connection between the right to privacy and assemblies

6. PI welcomes paragraph 9 which notes that the protection of the right of peaceful assembly is dependent on the realisation of other fundamental rights and freedoms including the right to privacy.
7. Furthermore, the explicit acknowledgement in paragraph 112 that the “surveillance of those involved in assemblies and other data-gathering may violate their right to privacy” provided for under Article 17 of the International Covenant on Civil and Political Rights is a welcome inclusion in the General Comment.
8. PI also commends the reference in paragraph 11 to “emerging technologies” and how they “present new spaces and opportunities as well as challenges for the exercise of the right of peaceful assembly”. In particular we welcome the direct reference also in this paragraph to the negative impact of communication technologies on assemblies, and the acknowledgement that surveillance technologies can be used “to infringe on the privacy and other rights of participants and bystanders”.
9. The inclusion of concerns about the infringement of the right to privacy as a result of the use of facial recognition and other technologies which allow for the identification of participants, and the risks associated with the use of recording devices, including body-worn cameras, is also an important element which we are pleased the Committee has taken into account in the General Comment.

General remark on the importance of the online space as a form of protest

10. PI welcomes the draft General Comment’s reference to online assemblies. Particularly in paragraph 15 of the current draft it is explicitly recognised that the same protections that apply in physical assemblies should apply to online assemblies: “..., although the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, **comparable human rights protections also apply to acts of collective expression through digital means, for example online**. At the same time, the fact that people can communicate online should not be used as a ground for restrictions on in-person assemblies.”
11. However, PI would like to suggest to the Committee to consider further incorporating elements of the ability to assemble online throughout the general comment. Online assemblies are not a mere afterthought of physical assemblies. Demonstrators are increasingly today relying on social media platforms not only to organise protests but

also to protest online. This is particularly the case not only in countries where physical protests are oppressed but also in democratic societies where online space is considered a new means to protest. Whether the online space is used as a medium facilitating protests or as a platform for protesting, social media platforms, mobile applications, and other web resources empower and facilitate exchanges of information, expressions of views and organisation of peaceful assemblies. Any aspects of the General Comment related to the facilitating and/or restricting assemblies must be considered in the realm of the digital space.

12. These platforms are almost invariably owned by a handful of private companies. As noted by the Special Rapporteur on Freedom of Expression “Internet companies have become central platforms for discussion and debate, information access, commerce and human development.”³
13. PI encourages the Committee to further incorporate in its analysis of states’ obligations to ensure that individuals can enjoy their right to freedom of assembly online without undue interferences by state and non-state actors. Particularly, it is important to highlight further the role of social media platforms and their surveillance to that effect.
14. We further suggest specific additions to the current draft paragraphs below.

Specific comments

15. **§ 6:** We recommend adding “online assembly” among the examples of forms of assembly.
16. **§ 9:** We suggest adding the right to privacy to the following sentence: “The full protection of the right of peaceful assembly is possible only when the other, often overlapping, rights related to political freedom are also protected, notably freedom of expression, but also rights such as freedom of association and political participation[, as well as the right to privacy].” While mostly omitted when referring to political freedoms, the protections of the right to privacy are crucial for ensuring their exercise. The right to privacy also protects the personal development.
17. **§ 11:** We suggest adding the word “exercising” to the following sentence: “Communication technologies often play an integral role in [exercising,] organizing and monitoring, but also in impeding assemblies.”
18. **§ 38:**
 - (a) We suggest adding the word “social media platforms” to the following sentence: “States parties should ensure that self-regulation by Internet service providers [and social media platforms] does not unduly affect assemblies and that the

³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 6 April 2018 (A/HRC/38/35), at § 9.

activities of those providers do not unduly infringe upon the privacy or safety of assembly participants.”

(b) We suggest adding a reference to conformity with right to privacy, next to or similar to the reference to freedom of expression. This is particularly relevant considering that there is a reference to geo-targeted or technology-specific interference. E.g. [Any interference with assembly communications or gatherings must conform with the tests for restrictions on the right to privacy.]

19. **§ 64:** We recommend adding reference to online space as a place of gathering.
20. **§ 70:** PI welcomes the reference to wearing of face coverings or other discusses by assembly participants as a legitimate choice. However, it urges the Committee to consider re-introducing the reference to anonymous participation that was included in first draft. Also, it would be also important at this stage to highlight the importance of anonymity online to be able to exercise the right to peaceful assembly freely. As noted by the UN Special Rapporteur on Freedom of Expression “Anonymous speech has been necessary for activists and protestors, but States have regularly attempted to ban or intercept anonymous communications in times of protest. Such attempts to interfere with the freedom of expression unlawfully pursue an illegitimate objective of undermining the right to peaceful protest under the Universal Declaration and the International Covenant on Civil and Political Rights.”⁴
21. **§ 71:** Similarly, it would be useful to extend the protections listed in this paragraph to assemblies occurring in online spaces.
22. **§ 72:** PI welcomes the addition of the reference to use of surveillance technologies as interfering and violating the right to privacy. It urges the Committee to consider adding a sentence that underlines first that there should be a presumption against the use of privacy-intrusive surveillance technologies in assemblies. Also as part of increased demands made on governments to take steps “to enhance transparency and accountability in the acquisition of surveillance technologies by States” as presented by the United Nations High Commissioner for Human Rights, amongst others, it would be useful to highlight the need for transparency regarding which and when surveillance technologies are deployed during assemblies.⁵
23. **§ 94:** PI would recommend adding a reference to restricting the use of new and emerging digital techniques of ‘stop and search’ such as Mobile Phone Extraction technologies in the context of assemblies.⁶ Such invasive techniques have been reported to have been used by law enforcement agencies, including in the United

⁴ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, 22 May 2015, A/HRC/29/32, § 53.

⁵ Report of the United Nations High Commissioner for Human Rights, The right to privacy in the digital age, 3 August 2018, A/HRC/39/29, § 61 (h).

⁶ For further information on the intrusiveness and extensive use of such technologies in the United Kingdom: PI, Digital stop and search: how the UK police can secretly download everything from your mobile phone, 27 March 2018, available at <https://privacyinternational.org/report/1699/digital-stop-and-search-how-uk-police-can-secretly-download-everything-your-mobile>.

Kingdom. The General Comment is an opportunity to bring attention to these emerging surveillance technologies and to call for their regulation and/or ban.

24. **§ 114:** We suggest that this paragraph is retained, as it serves its own purpose and has a specific added value

Conclusion

25. PI welcomes once again the draft General Comment and expresses its gratitude to the Committee for undertaking this crucial task.
26. In our opinion, the Draft General Comment is suitable for adoption in the second reading at the Committee's 128th session in Geneva this month, subject to minor editorial revisions outlined in this document.