

**On General comment No. 37**

**Article 21: right of peaceful assembly**

The Commission on Human Rights submits the following suggestions which we hope will be of use in the drafting of General Comment No 37:

* The first sentence of Item No. 8 may be amended as follows, *“The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to* ***protect, respect, and ensure*** *the exercise of the right.”*
* Item No. 10 provides that should the assemblies become violent, the participants would still retain some of their rights under the ICCPR, subject to “*applicable restrictions*.” To make it more specific, this may be amended to “*applicable restrictions* ***under the law*.**”
* The Commission prefers the inclusion of **Option 2** under Item No. 22.
* Item No. 24 provides, *“Because the right of peaceful assembly is not absolute, the obligation to respect and ensure the right of peaceful assembly may in some cases be adjusted accordingly.”* There should be an inclusion of a list of situations where the obligation to protect the right of peaceful assembly may be adjusted.
* Item No. 29 may be amended as follows, *“In dealing with assemblies, States parties must take precautionary measures aimed at preventing violations and abuses of the different rights at stake.* ***Such precautionary measures must be in accordance with the laws available, whether domestic or international.***”
* Under Item No. 46, restrictions should not be based on value judgments alone. There must be specific parameters to ensure a careful and objective assessment of the situation.
* Item No. 52 may be removed due to the existence of different perspectives on morality. Morality is subjective.
* Item No. 76 may be amended as follows, *“Where criminal or administrative sanctions are used against participants in a peaceful assembly, such sanctions (1)* ***must be in accordance with law,*** *(2) must be proportionate, (3) and cannot apply where their conduct is protected by the right.”*
* Under Item No. 84, it should be emphasized that instead of requiring those wishing to assemble to apply for a permit, the requirement should be limited to the act of giving due ***notice*** to the authorities. The requirement of a permit to assemble is inconsistent with the recognition of peaceful assembly as a basic right.
* The second sentence under Item No. 93 may be amended as follows, *“(Preventive detention) may be done only (1)* ***in accordance with the reasons specified by law,*** *and (2) where the authorities have actual knowledge of the intent of the individuals involved to engage in or incite acts of violence during a particular assembly, and (3) where other measures to prevent violence from occurring will clearly be inadequate.*” The phrase “in exceptional cases” should also be removed.
* Item No. 113 provides, *“Participants in peaceful assemblies must not infringe on the rights of others. This may for example include their freedom of movement.”* Item No. 96 also provides, *“An assembly that remains peaceful but which nevertheless causes a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is ‘serious and sustained.’”*
	+ Items No. 113 and 96 are inconsistent with Item No. 7 which recognizes that peaceful assemblies may result in the disruption of *“vehicular or pedestrian movement, or economic activity.”* Item No. 7 provides, “*… Peaceful assemblies are sometimes used to pursue ideas or goals that are somehow contentious, and their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity. They may be intended to have these consequences, without necessarily calling into question the protection such assemblies should enjoy.*”
	+ Moreover, under Item No. 96, there must be specific parameters to determine when a disruption is considered *“serious and sustained.*”