**Submission by the Norwegian Government**

**Draft General Comment No. 37 on Article 21 (the right of peaceful assembly) of the International Covenant on Civil and Political Rights**

The Norwegian Government refers to the invitation from the Human Rights Committee to submit written contributions on the draft General Comment No. 37 on Article 21 (the right of peaceful assembly) of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant).

Norway has been a party to the Covenant since 1972. The Government would first like to underline the importance it attaches to the Covenant, and confirm its commitment to fully comply with Norway’s treaty obligations.

Norway welcomes the Committee’s efforts to formulate General Comments with regard to articles or specific themes concerning the Covenant and appreciates this opportunity to submit its observations on the draft General Comment concerning Article 21. Where Norway has not provided specific comments on issues raised in the draft General Comment, this should not be interpreted as either agreement or disagreement with its substance.

The Norwegian Government would like to comment on the following parts of the draft General Comment:

In **paragraph 70**, the Committee states:

*“The wearing of face coverings or other disguises by assembly participants, such as hoods or masks, may form part of the expressive element of a peaceful assembly or serve to counter reprisals, also in the context of new surveillance technologies, and serve to protect privacy. Assembly participants should not be prohibited from wearing face coverings where there is no demonstrable evidence of imminent violence on their part and probable cause for arrest. As such, blanket bans can only be justified on an exceptional basis.”*

While recognizing that there may be legitimate reasons for assembly participants to cover their faces, Norway is of the view that Article 21 cannot be understood to only allow States to prohibit hoods or masks during assemblies when there is “demonstrable evidence of imminent violence on their part and probable cause of arrest”. Article 21 allows for restrictions on the right of peaceful assembly which are in conformity with the law and necessary in a democratic society in the interest of i.a. national security or public safety, public order or the protection of the rights and freedoms of others.

In regard to the legitimate aim of protecting the rights and freedoms of others, Norway invites the Committee to consider the jurisprudence of the European Court of Human Rights regarding laws prohibiting the concealment of one’s face in public places when deciding on the wording of paragraph 70. Reference is made to the Court’s judgements in *S.A.S v. France*, *Belcacemi and Oussar v. Belgium* and *Dakir v. Belgium.* According to the Court, blanket bans on face coverings may be justified to ensure interaction between individuals to ensure the functioning of a democratic society. While there may be legitimate reasons for assembly participants to cover their faces, Norway invites the Committee to also take into consideration that, depending on the circumstances, the wearing of face coverings by assembly participants in public places may have an intimidating or frightening effect on others.

Against this background, Norway suggests the following changes to paragraph 70:

“~~The wearing of face coverings or other disguises by assembly participants, such as hoods or masks, may form part of the expressive element of a peaceful assembly or serve to counter reprisals, also in the context of new surveillance technologies, and serve to protect privacy~~. Assembly participants should not be prohibited from wearing face coverings where there is **just cause for wearing them, for instance where they may form part of the expressive element of a peaceful assembly or serve to counter reprisals, also in the context of new surveillance technologies.**  ~~no demonstrable evidence of imminent violence on their part and probable cause for arrest.~~ ~~As such~~ **B**lanket bans can only be justified ~~on an exceptional basis.~~ **if they are in conformity with the law and necessary in a democratic society in the interest of i.a. national security or public safety, public order or the protection of the rights and freedoms of others.**”

In **paragraph 99**, the Committee states:

*“The use of unnecessary or disproportionate force may breach articles 7 and 9 of the Covenant and, where death results, may violate article 6. In an extreme case, widespread or systematic use of lethal force against participants in peaceful assemblies may constitute a crime against humanity.”*

Norway would caution against adopting a statement relating to crimes against humanity that may conflict with, or which may be read as adding to or diminishing, the definition of such crimes in other international instruments, such as the Rome Statute.

Norway does not disagree with the statement in paragraph 99 that «widespread or systematic use of lethal force against participants in peaceful assemblies may constitute a crime against humanity”. However, Norway notes that the concept of crimes against humanity in the Rome Statute is not limited to the use of lethal force. Murder is one of several offenses that might, if performed as part of widespread or systematic attack directed against any civilian population, amount to a crime against humanity. We question whether it is appropriate to limit the statement to the “use of lethal force” when also other acts against participants in peaceful assemblies may, if performed as part of a widespread or systematic attack directed against any civilian population, constitute crimes against humanity. In the context of peaceful assemblies, such other acts may possibly include:

* imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, cf. Rome Statute Article 7(1)(e);
* enforced disappearance of persons, cf. Rome Statute Article 7(1)(i);
* other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health, cf. Rome Statute Article 7(1)(k).

Norway also questions whether the introduction of “[i]n an extreme case” is necessary. This may be read as adding a level of gravity needed to qualify as a crime against humanity which is not reflected in the Rome Statute definition.

An alternative to redrafting the reference to crimes against humanity could be to remove it from the general comment. While we appreciate the inclusion of a reference to crimes against humanity and find it relevant, removing the reference would not, in our opinion, diminish the value of the General Comment.

In **paragraph 106**, the Committee states:

*“The State is fully responsible for any remotely controlled weapons systems that it uses during an assembly. Such methods of force delivery may escalate tensions and should be used only with great caution. Fully autonomous weapons systems, where lethal or less-lethal force can be used against assembly participants without meaningful human intervention once a system has been deployed, shall never be used for law enforcement during an assembly.”*

Norway would like to note that there is so far no internationally agreed definition of fully autonomous weapons, and that there are currently ongoing international discussions of this issue. In that context, including a reference to “[f]ully autonomous weapons systems” in this General Comment may seem somewhat premature.

Against the above background, Norway invites the Committee to reconsider the draft General Comment No. 37 on certain accounts, taking into consideration the prevalent understanding among the States Parties of the obligations assumed under the Covenant.

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