

21 February 2020

**General Comment No. 37 on Article 21: right of peaceful assembly - Revised draft
prepared by the Rapporteur, Mr. Christof Heyns**

Submission by Anita Danka¹, Independent Human Rights Law Expert

Dear Human Rights Committee,

I have the honour to address you in response to the call for comments issued on the Committee's website requesting inputs for the Revised draft prepared by the Rapporteur, Mr. Christof Heyns, of the General Comment No. 37 on Article 21 of the Universal Declaration of Human Rights on the right of peaceful assembly.

I am an Independent Human Rights Law Expert. Between 2008 and 2019 I worked at the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe in various capacities. As a Human Rights Adviser/Monitoring and Response Coordinator I was responsible for organizing and leading assembly monitoring exercises observing assemblies in seventeen OSCE participating States and was the lead drafter of three ODIHR thematic assembly monitoring reports including the observation findings and recommendations.² I also had the chance to help develop a training curriculum on human rights compliant policing of assemblies and led relevant capacity building efforts for mid-ranking public order police commanders in five OSCE participating States. My relevant academic publications include *The right of children to be heard through peaceful protests* and *The role of communication in the human rights-based facilitation of peaceful protests*, published in the European Yearbook on Human Rights 2019 and 2017 respectively.

Several representatives from civil society organizations, national human rights institutions, academia, state authorities and international organizations have already provided valuable information to support the drafting process of General Comment 37, which is a testimony to the importance and timeliness of the relevant work of the Human Rights Committee. I take the opportunity to focus my submission to three areas, which, in my view, have not received sufficient attention so far. These are:

¹ The views expressed in this contribution by the author do not necessarily represent the views of ODIHR or any organisations with which the author is affiliated.

² The reports were published in December 2014: <http://www.osce.org/odihr/132281?download=true> December 2016: <https://www.osce.org/odihr/289721?download=true> and September 2019: <https://www.osce.org/odihr/430793> respectively.

- The right of children to be heard through peaceful assemblies
- The role of assembly monitoring in the full enjoyment of the freedom of peaceful assembly
- The positive obligation of local authorities to ensure the freedom of peaceful assembly

I. The right of children to be heard through peaceful assemblies

The Universal Declaration of Human Rights,³ the ICCPR,⁴ the African Charter on Human and Peoples' Rights,⁵ the American Convention on Human Rights⁶ and the European Convention on Human Rights and Fundamental Freedoms⁷ guarantee the right of everyone, including children, to assemble peacefully. The Convention on the Rights of the Child, the most widely adopted human rights treaty on the planet, requires State parties to recognize the rights of children to freedom of peaceful assembly.⁸

The CRC also guarantees the right of children capable of forming their own views to express those views freely in all matters affecting them,⁹ the right to freedom of expression¹⁰ and the right to access to appropriate information.¹¹ These rights reflect children's right to participation, which is one of the guiding principles of the Convention.

General Comment 12 of the United Nations Committee on the Rights of the Child states: '[T]he right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention.'¹² General Comment 12 also provides: 'The concept of participation emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives.'¹³ Article 24 of the Charter of Fundamental Rights of the European Union (CFREU) states that: 'Children [...] may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.'¹⁴

The freedom of peaceful assembly is particularly important for children, who are, in most parts of the world, without the right to vote, and therefore have fewer means than adults through which to assert their interests and their views be heard.¹⁵ Children lack full legal capacity and therefore are

³ Article 20(1) Universal Declaration of Human Rights.

⁴ Article 21 ICCPR.

⁵ Article 11 African Charter on Human and Peoples' Rights, the American Convention on Human Rights.

⁶ Article 15 American Convention on Human Rights.

⁷ Article 11 European Convention on Human Rights and Fundamental Freedoms.

⁸ Article 15 CRC.

⁹ Article 12(1) CRC.

¹⁰ Article 13 CRC.

¹¹ Article 17 CRC.

¹² Ibid UN Committee on the Rights of the Child, 'General Comment 12. The Right of the Child to be Heard', UN Doc. CRC/C/GC/12, 01.07.2009., para. 3.

¹³ UN Committee on the Rights of the Child (2009), 'General Comment 12', *supra* note 18, para. 13.

¹⁴ Article 24 CFRU.

¹⁵ A. DALY, 'Demonstrating Positive Obligations: Children's Rights and Peaceful Protest in International Law', p. 6, available at <http://repository.essex.ac.uk/7421/1/SSRN-id2293066.pdf>, last accessed 28.06.2019. Today, the most common voting age is 18, corresponding with reaching the full legal capacity in most countries. In 2007

rarely entitled to represent themselves directly at court proceedings and they are not represented in traditional state structures. Children not only lack political power they are also economically weak and constitute one of the most vulnerable groups in society.

Children's right to participation is closely linked to their right to information,¹⁶ which is a key prerequisite for children's participation to be relevant, meaningful and to enable informed decision-making. Their right to freedom of expression also entails seeking and receiving information and ideas of all kinds through any media of the child's choice.¹⁷

Children's access to information is also relevant for their education. The right of children to education means a right to quality education. One of the criteria of quality education is 'adaptability'. This requires education to be flexible so that it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.¹⁸ Education must be directed to responsible citizenship, including the respect for human rights and fundamental freedoms and the respect for the natural environment.¹⁹ 'To achieve citizenship and all it entails, children must be perceived not as mere recipients of knowledge, but rather as active players in the learning process.'²⁰ Through the exercise of their freedom to assemble peacefully children practice citizenship, learn about key democratic principles and values by standing up for themselves or others²¹ or contribute to important debates of great public concern.

The Committee on the Rights of the Child emphasized that the full enjoyment of freedom of assembly is essential for the children's development and may only be subject to very limited restrictions.²² The rights of the child to be heard and their freedom to assemble peacefully pose strong positive obligations on the State to actively facilitate and enable the assemblies aimed to voice the concerns of children.

Austria became the first country in Europe to reduce voting age from 18 to 16. EUX.tv — the Europe Channel, the Netherlands. 05.06.2007, "Austria lowers voting age to 16", available at <https://web.archive.org/web/20070930190614/http://www.eux.tv/article.aspx?articleId=9251>, last accessed 21.08.2019. Argentina, Brazil and Nicaragua have also lowered the voting age to 16. See Child Rights International Network, 'Submission for the report of the Special Rapporteur on human rights and the environment on the environment and the rights of the child', 14. 09. 2017, available at https://archive.crin.org/sites/default/files/crin_submission_childrens_rights_environment.pdf, last accessed 22.08.2019.

¹⁶ Article 17 CRC.

¹⁷ Article 13(1) of the CRC provides: 'The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.'

¹⁸ UN Committee on Economic Social and Cultural Rights, 'General Comment No. 13. The Right to Education (Art. 13)', UN Doc. E/C.12/1999/10, 08.12.1999.

¹⁹ Article 29 CRC.

²⁰ UNICEF, 'Fact Sheet: The Right to Participation', 2015, available at <https://europa.eu/capacity4dev/rnsfmit/documents/unicef-2015-fact-sheet-right-participation>, last accessed 02.07.2019.

²¹ CBC News, 'Bullied Child Holds Protest After Facing Repeated Harassment at Winnipeg School', 17.09.2018, available at <https://www.cbc.ca/news/canada/manitoba/bullied-child-john-pritchard-school-austin-young-1.4826458>, last accessed 28.06.2019.

²² Committee on the Rights of the Child, UN Doc. A/HRC/17/9 (UPR, 2011) and CRC/C/FRA/CO/4 (CRC, 2009), para. 49.

2019 saw a year of protests. Pupils and students in over a hundred countries were regularly taking to the streets²³ demanding for climate justice and environmental protection from their governments and protesting against global warming and the inaction of the people in power.²⁴ Although there appears to be a growing number of assemblies relating to issues affecting children and seeing adolescents among assembly organizers or participants is more and more common in many countries, the particular needs that must be met to enable them to fully enjoy their rights is often neglected and there have been reported examples when authorities threatened or punished children exercising their freedom of peaceful assembly or intimidated parents for allowing children to skip school in order to take part in protests²⁵ or high ranking politicians called into question publicly the genuineness of the youth climate justice movement.²⁶ Besides repressions by school authorities, stigmatization and harassment for exercising assembly rights, other reported challenges included lack of parental support, undue restrictions by law enforcement authorities (arrests, unnecessary or disproportionate use of force, lack of police protection from violence by others) and lack of an effective remedy for alleged violations of freedom of peaceful assembly. In addition, in some countries children cannot legally organize assemblies,²⁷ in others burdensome notification/authorization procedures²⁸ may render assembly rights inaccessible for children.

²³ S. LAVILLE, M. TAYLOR and D. HURST, “It’s our Time to Rise Up”: Youth Climate Strikes Held in 100 Countries’, *The Guardian*, 15.03.2019, available at <https://www.theguardian.com/environment/2019/mar/15/its-our-time-to-rise-up-youth-climate-strikes-held-in-100-countries>, last accessed 28.06.2019, FRIDAYS FOR FUTURE Movement, available at <https://www.fridaysforfuture.org>, last accessed 21.08.2019.

²⁴ The student movement was said to have been inspired by 16-year-old Greta Thunberg, now nominated for a Nobel Prize, who started a global movement after she sat outside Swedish parliament every Friday beginning of August 2018.

²⁵ W. POMREHN, “Schulstreiks: München packt den Knüppel aus”, *Telepolis*, 03.04.2019, <https://www.heise.de/tp/news/Schulstreiks-Muenchen-packt-den-Knueppel-aus-4359170.html>, last accessed 28.06.2019, HUMAN RIGHTS WATCH, ‘Russia: Children, Students Targeted after Protests’, 11.06.2017, available at <https://www.hrw.org/news/2017/06/11/russia-children-students-targeted-after-protests>, last accessed 28.06.2019, J. BARRIE, “Three schoolgirls have been banned from their end of year prom after going on a climate emergency march”, *INews*, 21.06.2019, available at <https://inews.co.uk/news/uk/schoolgirls-banned-prom-attending-climate-emergency-protest/>, last accessed 20.08.2019.

²⁶ D. BOFFEY, “Belgian minister resigns over school-strike conspiracy claims”, *The Guardian*, 05.02.2019, available at <https://www.theguardian.com/world/2019/feb/05/belgian-environment-minister-joke-schauvliege-claimed-children-climate-protests-a-set-up>, last accessed 21.08.2019.

²⁷ In Lithuania, assembly organizers are limited to 1) Lithuanian citizens and EU member state nationals who are at least 18 years old and have legal capacity; 2) foreign nationals with permanent residence in Lithuania; and 3) registered legal persons operating in Lithuania. Article 3, Lithuanian Law on Meetings.

²⁸ Notifications in Norway must be provided in writing and must contain the purpose of the event, the scope, the organizer, the time, the ending place and the organizational arrangements planned by the organizer. The notification submitted to Oslo police must also contain the expected number of participants, the use of instruments such as speakers and posters, expected impact on order and traffic, permission from landowners and local authorities’ considerations, experience from previous assemblies, use of the organizer’s own guards, use of physical barriers and plans related to emergency vehicles, route clearance from police and security and a vulnerability analysis in the case of large events. Section 11, Norwegian Police Act. “Events”, Politiet, <<https://www.politiet.no/en/services/arrangementer/>>. In Vilnius, Lithuania the notification received by the municipality is shared with the police. A coordination meeting is held involving the organizer, the municipal administration director or their deputy, police, representatives of other institutions, such as the veterinary services. The outcome of the meeting is recorded in an agreement (“isakymas”, order) There is de facto compulsory participation of the organizer in this coordination meeting with the authorities following the assembly notification, and there is also an obligation of the organizer to clean up after an assembly. Please see further examples from

Therefore, it is important for the General Comment to spell out the positive obligations of the State to protect, promote and fulfil the right of children to assemble peacefully.

In a joint submission with *Child Rights Connect* and its member organizations we provide textual recommendations to the draft General Comment informed by a survey including inputs from 91 children aged 10- 18 years old, in 15 countries.²⁹ In this submission I would like to provide some general recommendations based on my research and analysis³⁰ that could serve as additional guidance for the revision of the text.

Recommendations:

States should create an enabling environment for children to be able to voice their opinion through assemblies and participate in social and political debates affecting them. In this respect, they should

- **Bring existing national laws and policies in line with international human rights standards and commitments related to children’s right to freedom of peaceful assembly, including reaffirming children’s freedom of peaceful assembly (which entails both the right to organize as well as participate in assemblies peacefully) in national law and thoroughly assessing and eliminating existing legal barriers of and policies with adverse impact on the free exercise and full enjoyment of this fundamental freedom by children. States should ensure that the proposed laws and policies are in line with the international human rights standards.**
- **Protect against repression, stigmatization or harassment of children exercising their assembly rights.**
- **Raise awareness of all stakeholders including local authorities, law enforcement, educational institutions etc. about the importance of children’s full enjoyment of freedom of peaceful assembly and provide guidance on how they can facilitate the exercise of this right in a human rights complaint manner. The development of such guidance should be based on paying particular attention to particularly disenfranchised children (including girls, disabled children, children living in poverty, indigenous children, those living in remote/rural areas) and cooperation with child rights defenders and involve an open consultative process while drawing on internationally recognized good practices.**
- **Ensure that authorities do not intimidate or sanction parents or other primary caregivers for allowing and supporting children to exercise their freedom of peaceful assembly.**

ODIHR’s assembly monitoring reports: <http://www.osce.org/odihr/132281?download=true> ,
<https://www.osce.org/odihr/289721?download=true> and <https://www.osce.org/odihr/430793>

²⁹ Joint submission by Child Rights Connect, including its members Child Rights Information Centre -Moldova, Plan International and Humanium, and Anita Danka, Independent Human Rights Law Expert.

³⁰ Please see further details in Anita Danka, “The Rights of Children to be heard through peaceful protests” in European Yearbook on Human Rights (October 2019) <https://intersentia.com/en/european-yearbook-on-human-rights-2019.html>

- **Ensure that law enforcement authorities are sufficiently trained in how to facilitate assemblies involving children while upholding human rights and protecting the best interest of the child and their rights.**
- **Ensure access to an effective remedy for any undue limitations of children's freedom of peaceful assembly by law enforcement, local or other authorities and raise awareness about internationally recognized good practices in this regard.**
- **Raise awareness of children about their participation rights, including their freedom of peaceful assembly, and ensure that information about the exercise of these rights and the role of relevant stakeholders responsible for their facilitation reach all children.**

In line with the obligation to direct education to responsible citizenship, including the respect for human rights and fundamental freedoms, schools should not threaten or sanction children simply for organizing or participating in peaceful assemblies and responsible accommodations should be made to enable children to be heard through peaceful protests about matters concerning them even during schools hours.

Parents, other primary caregivers, educators, children associations, child rights defenders, civil society organization engaged in furthering the participation rights of children should be supported in their role to assist children to fully enjoy their freedom of peaceful assembly.

II. The role of assembly monitoring in the full enjoyment of the freedom of peaceful assembly

As with all human rights, the primary responsibility to promote and protect freedom of assembly lies with the state, but independent national human rights institutions and civil society organizations have a crucial role to play in monitoring the implementation of this freedom.

Human rights monitoring is a central tool in responding to human rights concerns and crises with the aim to identify causes of human rights problems, developing possible solutions, promoting accountability and deterring further human rights violations.³¹

Assembly monitoring is a type of human rights monitoring, which involves the observation of assemblies and the collection, verification, analysis and use of information in the context of the exercise of this freedom in order to improve the protection and promotion of the full enjoyment of the right to freedom of peaceful assembly. Monitoring the respect for, and protection of, freedom of peaceful assembly involves the intentional and organized presence of monitors at public assemblies to observe, document and report both the flow of events and the interaction of participants, the police and other state authorities. Monitors might also need to observe a range of activities that take place both before an assembly (imposition of restrictions or an appeals process) and after an assembly (detention and trial procedures), which will involve drawing on a specific body of practice related to trial monitoring and detention monitoring.

³¹ OHCHR *Manual on Human Rights Monitoring*, 2011, p.5.

Human rights defenders and journalists have an important role to play in providing independent, impartial and objective coverage of demonstrations and protests, including a factual record of the conduct of participants and law-enforcement officials alike.³² The monitoring of public assemblies provides a vital source of independent information on the activities of both participants and law-enforcement officials that may be used to inform public debate and serve as the basis for dialogue between state and local authorities, law-enforcement officials and civil society.³³ In this regard, the European Court of Human Rights has affirmed that the public has a right to be informed about public assemblies taking place and how they unfold.³⁴

The right to monitor public assemblies is part of the more general right to seek and receive information, which is a corollary to the right to freedom of expression and therefore protected by international human rights norms.³⁵ The freedom to monitor public assemblies should be guaranteed not only to all media representatives, including so-called citizen journalists,³⁶ but also to other members of civil society, such as human rights activists.³⁷

Independent monitoring is often carried out by intergovernmental organizations, NHRIs or NGOs. Such individuals and groups should, therefore, be permitted to operate freely in the context of monitoring freedom of assembly.³⁸ The OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders affirm that “human rights defenders and their organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies.”³⁹

As the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized, the right to peaceful assembly not only covers the right to hold or participate in an assembly, but it also protects the rights of those monitoring peaceful assemblies.⁴⁰ He has,

³² “Human Rights Defenders”, United Nations Human Rights Council A/62/225, 13 August 2007, para. 91; “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, 21 May 2012, para. 48.

³³ *Guidelines on Freedom of Peaceful Assembly* (Warsaw/Strasbourg: ODIHR/Venice Commission, 2010, 2nd ed.), <<http://www.osce.org/odihr/73405>> (hereinafter, the “*Guidelines*”). Para. 5.9.

³⁴ *Najafli v. Azerbaijan*, (2594/07), European Court of Human Rights First Section (2012), para. 66.

³⁵ “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies,” para. 68.

³⁶ Citizen journalism is intended here as the activity of citizens who do not work for the mainstream media but who collect, report, analyse and disseminate news and information.

³⁷ *Guidelines on Freedom of Peaceful Assembly* (Warsaw/Strasbourg: ODIHR/Venice Commission, 2010, 2nd ed.), <<http://www.osce.org/odihr/73405>> (hereinafter, the “*Guidelines*”). Explanatory Notes, para. 199.

³⁸ *Ibid.*, para. 201.

³⁹ OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders*, 2014, www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders, para. 62.

⁴⁰ “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”,

therefore, called on states to ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies⁴¹ and to respect and facilitate the right to observe and monitor all aspects of an assembly.⁴² The Special Representative of the UN Secretary-General on the situation of human rights defenders called on states to allow human rights defenders to operate freely in the context of assemblies in order to enable them to perform their monitoring role.⁴³ The UN Human Rights Council also recognized the importance of documenting human rights violations and abuses committed in the context of peaceful protests, as well as the role that can be played by national human rights institutions, civil society, journalists and other media workers, Internet users and human rights defenders in this regard.⁴⁴

The role of the media is to impart information and ideas on matters of public interest, information that the public also has a right to receive.⁴⁵ The media also have a very important role to play in providing independent coverage of public assemblies.⁴⁶ Media reports and footage provide a key element of public accountability for both event organizers and law-enforcement officials. As such, representatives of the media must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them.⁴⁷ As the OSCE Representative on Freedom of the Media has pointed out, “uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech”.⁴⁸ Engaging with the media is also an important means for the police to communicate with the wider public and can serve as a means of sharing information about the ways police intend to ensure that an assembly takes place peacefully.⁴⁹

A/HRC/20/27, 21 May 2012, Summary.

⁴¹ *Ibid.*, para. 94.

⁴² Subject to the narrow permissible restrictions outlined in Article 19(3) of the ICCPR. See “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies,” para. 70. Moreover, the African Commission on Human and Peoples’ Rights has stated that the right to monitor the observance of human rights in a given society includes the right to engage in active observation of an assembly and to collect, verify and use information related to the assembly.

⁴³ “Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani”, United Nations General Assembly, A/62/225, 13 August 2007, paras. 91, 101(f)(i).

⁴⁴ “The promotion and protection of human rights in the context of peaceful protests”, resolution adopted by the United Nations Human Rights Council, A/HRC/RES/38/11, 6 July 2018.

⁴⁵ *Guidelines on Freedom of Peaceful Assembly* (Warsaw/Strasbourg: ODIHR/Venice Commission, 2010, 2nd ed.), <<http://www.osce.org/odihr/73405>> (hereinafter, the “*Guidelines*”). Explanatory Notes, para. 206.

⁴⁶ *Ibid.*, para. 207.

⁴⁷ *Ibid.*, para. 208.

⁴⁸ “Special Report: Handling of the media during political demonstrations: Observations and Recommendations”, OSCE Representative on the Freedom of the Media, 21 June 2007, <<http://www.osce.org/fom/25744>>.

⁴⁹ OSCE/ODIHR, *Human Rights Handbook on Policing Assemblies*, 2016, <https://www.osce.org/odihr/226981> p. 33.

The UN Special Rapporteur on the rights to freedom of peaceful assembly has also highlighted that everyone—whether a participant, monitor or observer—enjoys the right to record an assembly, which also includes the right to record a law-enforcement operation. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.⁵⁰

Independent monitoring of assemblies by civil society organizations⁵¹, academic institutions, NHRIs/independent state institutions or police oversight bodies⁵² is more and more widespread. In addition, lawyers and bar associations have also been engaged in this work.⁵³ It is widely used as an assistance tool within the OSCE as well.⁵⁴ Nevertheless, it is very important that the General Comment reinforces the legitimacy of assembly monitoring and its contribution to the full enjoyment of freedom of peaceful assembly by contributing to police accountability.

Based on the above the following recommendations could be made:

States should recognize and raise awareness about the important contribution of independent monitoring to the full enjoyment of the freedom of peaceful assembly.

States should actively facilitate the independent monitoring of, and reporting on, the facilitation of assemblies and protection of the freedom of peaceful assembly including by:

- **refraining from imposing unnecessary or disproportionate restrictions on assembly-monitoring activities and ensuring that any restrictions that may be imposed on monitored assemblies do not limit the ability of monitors to carry out their activities without impediments and to observe all aspects of an assembly, such as during curfews, dispersals or arrests;**
- **ensuring that assembly monitors are able to photograph or otherwise record actions and activities at public assemblies, including law-enforcement operations or individual law-enforcement officials and that such video or audio recordings cannot be confiscated, seized and/or destroyed without due process and can be used as evidence in relevant disciplinary, administrative or criminal proceedings;**

⁵⁰ “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies “, para. 71.

⁵¹ Some examples include Amnesty International, Independent Observers Network, Ozon, Viasna, Netpol etc.

⁵² Austrian Ombudsman Board, Public Defender of Georgia, Committee P of Belgium, the Northern Ireland Parades Commission etc.

⁵³ Such as Legal Observers at ACLU or Turkish Bar Association.

⁵⁴ Such as by ODIHR, the OSCE Mission in Kosovo, OSCE Mission to Skopje, OSCE Mission to Bosnia and Herzegovina, OSCE Presence in Albania, and the Special Monitoring Mission to Ukraine, just to name a few.

- **demonstrating willingness on the part of the state authorities to engage with monitors before, during and after an assembly, where such engagement is sought, and to give due consideration to the findings and recommendations resulting from their assessment of the facilitation of assemblies so as to inform institutional learning and, more broadly, in the drafting of legislation and policies affecting the enjoyment of freedom of peaceful assembly;**
- **facilitating information gathering by NHRIs or other relevant independent oversight or monitoring bodies or civil society organizations working in the area of freedom of assembly about any anticipated assembly;**

States should ensure that both traditional and citizen journalists are able to provide coverage of public assemblies, including the actions of law-enforcement personnel, without official hindrance.

Therefore paragraph 34. could be modified the following way:

34. The role of journalists, human rights defenders and others involved in monitoring, including documenting or reporting on assemblies, is of special importance **for the full enjoyment of freedom of peaceful assembly**, and they are entitled to protection under the Covenant.⁵⁵ **Independent monitoring of assemblies should be actively facilitated including by refraining from imposing unnecessary or disproportionate restrictions, ensuring that assembly monitors are able to photograph or otherwise record actions and activities at public assemblies, including law-enforcement operations or individual law-enforcement officials.** The equipment they use must not be confiscated or damaged. Even if the assembly is declared unlawful or is dispersed, that does not terminate the right to monitor it. No one should be harassed or penalized as a result of their **monitoring activity**. It is a good practice for independent national human rights institutions, **other independent oversight or monitoring bodies, academic institutions, lawyers, international and non-governmental organizations to monitor assemblies and to facilitate their information gathering and give due consideration to the findings and recommendations.**

Only peaceful assemblies are protected by the right to freedom of assembly. There is no clear dividing line between assemblies that are peaceful and those that are violent, but there is a

⁵⁵ *Pranevich v. Belarus* (CCPR/C/124/D/2251/2013), para. 6.3 and 6.4; and *Zhagiparov v. Kazakhstan* CCPR/C/124/D/2441/2014, paras. 13.2–13.5.

presumption in favour of considering assemblies as peaceful.⁵⁶ The right to freedom of peaceful assembly is held by each individual participating in an assembly. An individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of a demonstration if the individual in question remains peaceful in his or her own intentions or behaviour.⁵⁷ The individual rights of peaceful participants are not affected by acts of violence by others, thus, the state response to disorder and violence must always be proportionate to the actions taken by the protestors. However, even when participants are not peaceful and, as a result, forfeit their right to peaceful assembly, they retain all the other rights that can be affected by their participation, including the rights to due process of law, bodily integrity, dignity and freedom from torture, cruel, inhuman or degrading treatment or punishment.

Therefore paragraph 85. should be modified in order to reflect the human rights obligations of police in the context of any assemblies as well as to clarify that the rights of participants should not be balanced against other members of the public but against their rights and freedoms.

85. The fundamental duty of any law enforcement agency involved in **policing assemblies** is to respect and ensure the exercise of the fundamental rights of the participants, while also taking reasonable measures to protect **the rights and freedoms of** other members of the public, including journalists,⁵⁸ monitors and observers, as well as public and private property.⁵⁹

III. The positive obligation of local authorities to ensure the freedom of peaceful assembly

Little attention has been given to the specific role that is played by municipalities in protecting and facilitating the right to assemble peacefully, including the good practices that may have been developed and the challenges that municipal authorities may face.

In many countries the primary responsibility for dealing with notifications of an intention to hold an assembly and to ensure that all assemblies are able to take place at the time, place and manner of the organizers' choosing, rests with the municipal authorities as the local representative of the state. They may also be closely involved in negotiations and mediation efforts with (prospective)

⁵⁶ European Court of Human Rights, *Lashmankin and others v. Russia* (applications Nos. 57818/09 and 14 others), judgment of 7 February 2017, paras. 402–403. “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, op. cit., note X, para. 26; the Guidelines, op. cit., note 1, Principle 2.1.

⁵⁷ ECtHR, decision on admissibility, *Ziliberberg v. Moldova*, 4 May 2004; also see “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, 21 May 2012, para. 25.

⁵⁸ CCPR/C/AGO/CO/1, para. 21; CCPR/C/GEO/CO/4, para. 12; and CCPR/C/KOR/CO/4, para. 52.

⁵⁹ A/HRC/31/66, para. 41.

assembly organizers and participants and have practical responsibilities in facilitating assemblies, and an obligation to provide clean-up after such events. The mayor of a municipality decides on issues related to assemblies for example in Bulgaria, France and the Netherlands.⁶⁰ In the Netherlands mayors may, in response to a notification, impose conditions or restrictions or even prohibit a demonstration. The authority responsible for administrative powers in the relevant area, which may be the local authority, the municipal authority, the regional authority or the Ministry of the Interior, decides issues related to assemblies in the Czech Republic.⁶¹ The regulatory authority decides on assembly related issues also in Portugal and Spain⁶² as well as in Belgium and Lithuania. Municipal powers are very broad in Belgium. A municipality may do anything that is not prohibited under the control of the federal state, communities, regions and provinces.⁶³ The municipal administration director or deputy is responsible for the smooth co-ordination of notified assemblies in Lithuania.⁶⁴

States have a general legal obligation to ensure the protection of the rights for all individuals under their jurisdiction. As emphasized by the UN Human Rights Committee's General Comment 31, these obligations extend to all branches of government – legislative, executive and judicial – ‘and other public or governmental authorities, at whatever level – national, regional or local’, including (for States with a federal structure) ‘all parts of federal states without any limitations or exceptions’.⁶⁵

At the same time local authorities may often have limited experience in dealing with assemblies, particularly localities outside of the capital or major urban areas; they may lack an understanding on human rights issues pertaining to freedom of peaceful assembly and in some cases decision makers may be subjected to political pressure or interference.

It is important to ensure that local authorities also exercise their power in a human rights compliant manner. The failure by the municipal authorities to do so should not absolve the national government of its duties to ensure the enjoyment of the freedom of peaceful assembly in the territory of the state. States should ensure the implementation of human rights obligations even in cases of decentralized governmental structures, which also involves supporting the work, and help develop the capacity of municipalities to facilitate and protect the right to freedom of peaceful assembly.

⁶⁰ Article 12, Law on Gatherings, Meetings and Manifestations of Bulgaria; Article 211-4, Internal Security Code of France; Article 5, Public Assemblies Act of the Netherlands

⁶¹ Articles 2a, 10, Act on the Right of Assembly of the Czech Republic.

⁶² Article 3(2), Decree 46/74 of Portugal; Article 10, Organic Law 9/1983 of Spain.

⁶³ See “Les compétences des communes”,

<http://www.belgium.be/fr/la_belgique/pouvoirs_publics/communes/competences/>.

⁶⁴ Article 12, Lithuanian Law on Meetings. Further examples can be found in ODIHR's assembly monitoring reports: <http://www.osce.org/odihr/132281?download=true> , <https://www.osce.org/odihr/289721?download=true> and <https://www.osce.org/odihr/430793>

⁶⁵ UN Human Rights Committee, General Comment, No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 4.

Therefore, the following recommendations could be made:

Sates should ensure the implementation and enforcement of human rights obligations related to the freedom of peaceful assembly in cases of decentralized governmental structures including by

- **raising awareness of local authorities having a role in the facilitation of the right to freedom of assembly about the international human rights standards relevant for the exercise and facilitation of the freedom of peaceful assembly and provide guidance on how they can fulfill their role in a human rights compliant manner. The development of such guidance should be based on paying particular attention to the needs of particularly disenfranchised people and involve an open consultative process while drawing on internationally recognized good practices.**
- **ensuring that local authorities operate within a clear and precise legal framework relating to freedom of peaceful assembly and that they are in line with the international human rights standards.**
- **ensuring that the regulation of assemblies is conducted in a transparent manner, giving the organizers timely notice of prompt regulatory decisions with justified reasons and recourse to a prompt and effective remedy through administrative and/or judicial review.**
- **ensuring that any administrative review procedure is sufficiently prompt to enable judicial review by an independent and impartial court to take place once administrative remedies have been exhausted, prior to the date of the assembly indicated in the notification.**

Local authorities should ensure that decisions taken relating to assemblies have a clear legal basis and follow consistent criteria based on international human rights standards.

Where notification of assemblies is to be provided to local authorities, they should ensure that there is a clear and flexible process for notification of assemblies, including through use of social media and online, which is neither too onerous nor bureaucratic for organizers

Local authorities and the police should work in a coordinated manner to facilitate assemblies and the facilitation of assemblies according to their purpose must be an important element of the strategic objectives of these authorities.

Local authorities should be open and transparent in publishing information in an accessible manner about all aspects of assemblies, before, during and after the event.

Therefore paragraph 39 should be modified to make clear that the failure of local authorities to operate in a human rights complaint manner does not absolve the national government of its duties.

39. While all organs of State carry the obligation to respect and ensure the right of peaceful assembly, decisions on assemblies are often taken at the local level. It is important therefore **to ensure that local**

authorities also exercise their power in a human rights compliant manner. The failure by the local authorities to do so should not absolve the national government of its duties to ensure the enjoyment of the freedom of peaceful assembly in the territory of the state, therefore they should help develop the capacity of local authorities to facilitate and protect the right to freedom of peaceful assembly.