**Response by the Constitutional Affairs and Legislation Department of the Dutch Ministry of the Interior and Kingdom Relations to General Comment no. 37 of the Human Rights Committee regarding article 21 (right of peaceful assembly) of the International Covenant on Civil and Political Rights**

**Para 34:**

‘The role of journalists, human rights defenders and others involved in monitoring, including documenting or reporting on assemblies, is of a special importance, and they are entitled to protection under [article 21 of] the Covenant.’

Isn’t the protection afforded by article 19 of the Covenant (freedom of expression) more relevant to these categories of people, particularly journalists? If so, it would make sense to mention more than just article 21 in this context.

**Para 36:**

‘Given that peaceful assemblies have an expressive function, and political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should likewise enjoy a heightened level of accommodation and protection.’

This raises the question of whether it is justifiable to offer assemblies with a political message a higher level of protection. Does this place higher demands on the efforts that the authorities must make to facilitate such assemblies? And are restrictions on the right of peaceful assembly then less acceptable in such cases?

Wouldn’t this involve making a legal distinction on the basis of a value judgment about the nature of the assembly, while the authorities are meant to take a ‘content neutral’ approach in regulating assemblies? How can these two things be reconciled? And what if the political message being voiced is a controversial one? Shouldn’t the duty to respect and safeguard the right of peaceful assembly apply generally to all assemblies, regardless of the message they convey?

**Para 37 and 38:**

According to paragraphs 37 and 38, certain activities that fall outside the immediate scope of an assembly but are necessary for or are somehow related to the meaningful exercise of the right of peaceful assembly may also fall under the protection of article 21 or a related right. Various activities are mentioned in this connection, including leaving an assembly afterwards. Do these paragraphs intend to say that all the activities cited are (potentially) entitled to protection under article 21? This would seem to be stretching the scope of the right of peaceful assembly quite far indeed. Or is it instead the case that the issue of protection for these activities is also, or even exclusively, covered by other rights specified in the Covenant, such as freedom of movement or freedom of expression? If that is the case, it would be helpful to distinguish those rights more clearly here.

The following sentence can also be found in para 38: ‘States parties should ensure that self-regulation by Internet service providers does not unduly affect assemblies and that the activities of those providers do not unduly infringe upon the privacy or safety of assembly participants.’

Without further explanation or references, this passage assumes a far-reaching obligation on the part of the State (‘ensure’); yet this obligation relates to a party and an issue over which the State generally has no direct authority.

**Para 72:**

‘Independent scrutiny and oversight must be exercised over the collection of personal information and data of those engaged in peaceful assemblies.’

Can the underlying reasoning of this passage be further explained or elucidated, especially the legal basis for assuming this obligation? Doesn’t data protection law play a (primary) role here?

**Para 114:**

‘[The right of peaceful assembly is often exercised with the aim of advancing the implementation of other fundamental human rights, as well as other norms and principles of international law. In such cases, the duty to respect and ensure the right of peaceful assembly derives its legal justification from the intrinsic value of the right, but also from the importance of the other rights, norms and principles whose implementation it advances.]’

There is no question that the right of peaceful assembly is an important one, and that it can also support the exercise of other (fundamental) rights. However, as with paragraph 36 above, this raises the question of whether the message (or aim) of an assembly should play a role in the legal justification/assessment of whether an assembly is entitled to protection. The formulation used would suggest that the duty to respect and safeguard the right of peaceful assembly relates in some way to the message /aim of the assembly. Does this mean, for example, that the protection to which assemblies are entitled can vary depending on their aim/message ?