



**WRITTEN COMMENTS  
TO THE REVISED DRAFT OF GENERAL COMMENT No. 27 ON ARTICLE 21  
OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS  
PREPARED BY HUMAN RIGHTS CENTRE “MEMORIAL” AND OVD-INFO**

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*Re:* Public call for comments to the Revised Draft of General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights

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## A. INTRODUCTION

1. This written contribution is submitted to the United Nations Human Rights Committee (“Committee”) by Human Rights Centre “Memorial” (HRC “Memorial”) and OVD-Info in response to the public call for comments to the Revised Draft of General Comment No. 37 on Article 21 (“General Comment”) of the International Covenant on Civil and Political Rights (“ICCPR”), concerning the right of peaceful assembly, adopted on first reading in November 2019.

## B. ABOUT HRC “MEMORIAL” AND OVD-INFO

2. [Human Rights Centre «Memorial»](#) (HRC «Memorial») is Moscow-based NGO, founded in 1992. Human Rights Centre «Memorial» works, among others, in partnership with the London-based European Human Rights Advocacy Centre (EHRAC) in a project aimed at taking cases to the European Court of Human Rights. More than 300 applications concerning human rights violations in the Russian Federation have been lodged with the Court within the framework of this joint project. A number of these cases concern an interference with the right to freedom of assembly, including *Frumkin v. Russia* (application no. 74568/12), *Sozayev and Others v. Russia* (application no. 67685/14), *Ilupin v. Russia* (application no. 57141/12), *Ilupin and Others v. Russia* (application no. 76797/13), *Aleksandrov v. Russia* (application no. 45733/13) and many others.
3. [OVD-Info](#) is an independent human rights media project aimed at monitoring cases of political persecution in Russia and providing legal assistance to victims of such persecution. OVD-Info was founded during mass protests of December 2011 as a volunteer project with the purpose of giving publicity to information on arrests of protests’ participants. Today OVD-Info operates a 24-hour federal hotline to collect information on all types of political persecution and coordinate legal assistance to its victims, provides legal education to activists and researches different types of political persecution in Russia.

## C. MATTERS FOR CONSIDERATION

### a. General remarks

4. We suggest that the words “in principle”, “generally”, “not necessarily” or similar ones are not used in cases where they are not followed by a description of the exceptions to the general rules. We believe that exceptions to the general rules should be described by the Committee and not left up to the interpretation of the States. For instance, we suggest to delete the underlined words in the phrases below or to list up the exceptions to the general rules directly in the text of the General Comment:

Para. 18: *“Civil disobedience or direct-action campaigns are in principle covered by article 21, provided they are non-violent”.*

Para. 23: *“The carrying by participants of objects that are or could be viewed as weapons is not necessarily sufficient to render the assembly violent”.*

Para. 25: *“The approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be “content neutral”.*

Para. 42: *“Any restrictions on participation in peaceful assemblies should in principle be based on a differentiated or individualized assessment of the conduct of the individual and the assembly concerned”.*

Para. 54: *“Central to the realisation of the right of peaceful assembly is the requirement that any restrictions must in principle be content neutral, and thus not be related to the message conveyed by the assembly”.*

Para. 65: *“As a general rule, prohibitions on all assemblies anywhere in the capital; in any public location except a single specified place, either in a city, or outside the city centre; or prohibitions on assemblies in “all the streets in the city”, may not be imposed”.*

Para. 68: *“As far as restrictions on the manner of peaceful assemblies are concerned: participants should generally be left to determine whether they want to use equipment such as posters or megaphones or musical instruments to convey their message”.*

Para. 74: *“Requirements for participants to cover the costs of policing or security or medical assistance or cleaning associated with peaceful assemblies are generally not compatible with article 21. These costs should as a rule be covered by public funds and should not be transferred to the participants”.*

We consider that it is particularly important to use the precise wording while determining the restrictions to the right to freedom of assembly.

5. We suggest that it is recognised in the General Comment that everyone present at the peaceful assembly are protected by the guarantees of Article 21 of the ICCPR, irrespective of whether these persons participate in the peaceful assembly or are passers-by. This provision would play an important role in examination of cases concerning disseminations of peaceful assemblies and indiscriminatory arrests of persons present at the spot.

#### **b. Notion of a “peaceful” assembly**

6. Para. 17: *“...Violence in this context typically entails the use by participants of physical force that is likely to result in injury or death, or serious damage to*

*property. Mere disruption of vehicular or pedestrian movement or daily activities does not amount to violence”.*

Since acts of violence by the participants of an assembly may be provoked by unlawful actions of the state agents (policemen, etc.), we suggest adding that while considering cases concerning violent actions of participants of an assembly, the courts should carefully analyse the general situation at the scene as well as the actions by the state agents. The authorities should bear the burden of proof with regard of proving that their actions were justified.

7. Para. 19: *“A violent assembly is one that is characterized by [widespread and serious] violence [, and is sometimes referred to as a riot]”.*

We suggest that the words in the square brackets are inserted, since they specify what acts constitute violence. We believe that single acts of physical force that is not likely to result in injury or death, or serious damage to property do not themselves render the assemble violent.<sup>1</sup>

8. Para. 20: *“The question of whether an assembly ceases to be peaceful must be answered with reference to violence that originates or is deemed to originate from the participants. Violence by the authorities against participants in a peaceful assembly does not in itself render the assembly violent”.*

We suggest that the following sentence is added to this paragraph: *“Self-defence by participants and/or organisers of an assembly against illegal and manifestly disproportionate violence by the police or and/or organisers of a counter-demonstration does not itself render the assembly violent”.*

9. Para. 22: *[Option 1: The scope of article 21 is further determined by article 20 of the Covenant, which requires States parties to prohibit propaganda for war (art. 20 (1)) and advocacy of national, racial or religious hatred that constitutes incitement to discrimination or hostility, in addition to violence (art. 20 (2)). Participation in assemblies where the expressive purpose is covered by article 20 does not fall within the scope of, and is not protected by, article 21. Such assemblies must be prohibited. Option 2 is that this paragraph be deleted, and the need to act against incitement of discrimination or hostility (not violence, that is part of the scope) be dealt with in the section on restrictions that require justification.]*

We suggest that Option 2 is chosen, since (1) the issue at hand concerns restrictions, but not the scope of the rights, (2) the “Restrictions” section already contains this thesis (para. 57).

10. Para. 33: *“States parties must moreover ensure independent and transparent oversight of all bodies involved in managing peaceful assemblies, including through*

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<sup>1</sup> For example, in Russia, [a number of criminal cases](#) were initiated against participants of a peaceful assembly who merely touched policemen present at the scene or threw some undangerous objects (plastic cups, empty plastic bottles) towards them.

*timely access to judicial remedies in case of [alleged/potential] violations of the right”.*

We suggest stressing that, according to Article 14 of the ICCPR, guarantees of the right to a fair trial should, without exception, apply to participants and organisers of peaceful assemblies.

### **c. Minorities’ right to participate and set a theme of an event**

11. Para. 28: *“States must not deal with assemblies in a discriminatory manner, for example on the basis of nationality, race, ethnicity, age, political opinion, religion, belief, minority status, disability, sexual orientation or gender identity. Particular efforts should be made to ensure equal and effective protection of the right of peaceful assembly of individuals who are members of groups who are or have been subjected to discrimination. This includes the duty to protect participants from homophobic, sexual or gender-based attacks”.*

We suggest specifying that minorities and vulnerable groups are entitled to conduct public events, “including those raising the issues concerning their particular group”.<sup>2</sup>

12. Para. 52: *“Restrictions on peaceful assemblies should only exceptionally be imposed for “the protection of morals”. If used at all, this ground should not be used to protect parochial understandings of morality or be based on principles deriving exclusively from a single social, philosophical or religious tradition and any such restrictions must be understood in the light of the universality of human rights and the principle of non-discrimination. Restrictions based on this ground may not for instance reflect opposition to expressions of sexual orientation”.*

We suggest adding that the “the protection of morals” ground should not be used for prohibition of or restrictions to peaceful assemblies related to the rights of women, disabled people and other groups who are or have been subjected to discrimination. Neither should this ground be used for prohibition of or restrictions to peaceful assemblies aimed at criticising the traditions of the society, including the religious and family traditions.

### **d. The obligation of States parties in respect of the right of peaceful assembly**

13. Para. 34: *“The role of journalists, human rights defenders and others involved in monitoring, including documenting or reporting on assemblies, is of special importance, and they are entitled to protection under [article 21 of] the Covenant. They may not be prohibited from exercising these functions, also in respect of the*

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<sup>2</sup> Our proposal is due to the fact that in Russia the discrimination is often based not on the basis of belonging to a certain group but on the basis of the subject of the assembly.

*actions of 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 penalised as a result of their attendance at demonstrations. It is a good practice for independent national human rights institutions and non-governmental organizations to monitor assemblies”.*

It is not clear whether the underlined sentence refers to those involved in monitoring (including journalists and human rights defenders) or to all participants of a peaceful assembly. We suggest that it is clarified.

14. Para. 37: *“For example, publicity for an upcoming assembly before notification has taken place cannot be penalized in the absence of a specific indication of what dangers would have been created by the early distribution of the information”.*

We suggest that the underlined phrase is deleted. When the assembly is protected by the ICCPR (which means, inter alia, that it is peaceful) the distribution of the information about it may not impose danger. We consider that there is a risk that governments use this phrase to prohibit and prosecute distribution of the information about peaceful assemblies that have not been yet approved by the authorities. The governments can argue that there is a “danger” that the assembly is not approved and, thus, the organisers should wait for this approval before disseminating the information about the assembly. We believe that the right to disseminate the information about a peaceful assembly should not be linked to the formal approval of the assembly by the authorities and to the risks that may derive from the prohibition of the assembly by the authorities.

15. Para. 38: *“In the digital age, many of these associated activities happen online or otherwise rely upon digital services. Such associated activities are also protected under article 21. States parties shall, for example, refrain from unduly blocking Internet connectivity in relation to demonstrations [, during demonstrations or at the place of demonstrations]”.*

We suggest that the words in the square brackets are inserted. We also suggest adding that private companies should be responsible for unduly blockings of the Internet connectivity during peaceful assemblies. In such situations the actions of the private companies should be considered not only as providing improper services but also as interferences with the right to peaceful assembly.

#### **e. Restrictions on the right of peaceful assembly**

16. Para. 44: *“The second sentence of article 21 provides that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law. This poses the formal requirement of legality, akin to the requirement that limitations must be “provided by law” in other articles of the Covenant. Restrictions must thus be imposed through law or administrative actions based on law. The laws in question must be sufficiently precise to allow members of society to decide*

*how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with its execution”.*

We suggest deleting the underlined words. We believe that all restrictions should be imposed through law.

17. Para. 55: *“Restrictions on peaceful assemblies must thus not be used, explicitly or implicitly, to stifle expression of political opposition to a government, including calls for changes of government, the constitution, the political system, or political independence for part of the country [, calls for changes of laws and traditions, alternative points of view on historical events, express positions against the majority opinion]”*

We suggest that the words in the square brackets are inserted.

18. Para. 56: *“The rules applicable to freedom of expression should be followed when dealing with the expressive element of peaceful assemblies, also when it provokes a hostile reaction. As with freedom of expression, restrictions on peaceful assembly may only under strictly limited circumstances be based on the message conveyed by the participants”.*

We suggest either clarifying what is understood by the phrase “strictly limited circumstances” and accompanying it with examples of such circumstances, or deleting the second sentence from this paragraph.

19. Para. 58: *“The fact that an assembly provokes or may provoke a hostile reaction from members of the public against participants, as a general rule, does not justify prohibition; the assembly must be allowed to go ahead and its participants must be protected. However, in the exceptional case where the State is manifestly unable to protect the participants from such threat, restrictions on the assembly may be imposed”.*

Para. 59: *“Any such restrictions must be able to withstand strict scrutiny. An unspecified risk of violence, or the mere possibility that the authorities will not have the capacity to prevent or neutralize the violence emanating from those opposed to the assembly, is not enough; the State must be able to show, based on a concrete risk assessment, that it would not be able to contain the situation, even if significant law enforcement capability were to be deployed. In such cases, alternatives such as postponement or relocation of the assembly must be considered before resort to prohibition”.*

We suggest deleting the underlined words in paragraphs 58-59. We consider that the situation described in these paragraphs may justify postponement, relocation or some other restrictions aimed at assuring safety of the participants of the peaceful assembly but may not justify prohibition of the assembly. In cases when even significant law enforcement forces can not protect participants of the assembly, the States may refer to the paras. 107-110 of the General Comment concerning the assemblies during states of emergency and armed conflicts.



20. We suggest that the following paragraph is inserted between paras. 60 and 61:

*“Posters and slogans used by participants of a peaceful assembly should not be subject to censorship, with the exclusion of cases when such posters and slogans incite to violence or hatred or encourage to commit hateful acts. Using certain posters and slogans should not be prohibited on the basis that they fall outside the content of assembly”.*

21. Para. 61: *“The regulation of the “time, place and manner” of assemblies is generally content neutral...”*

We suggest that the underlined word is deleted. We believe that since the content of the assembly is reconcilable with freedom of assembly as protected by the ICCPR, there should be no differences in regulating the time, place and manner of different assemblies.

22. Para. 63: *“Restrictions on the precise time of day or date when assemblies can or cannot be held, raise concerns about their compatibility with the Covenant. At the same time, it should be recognized that the timing of assemblies can affect their impact and may warrant restrictions. For example, assemblies held at night in residential areas might have an undue impact on the lives of those who live nearby. [Nevertheless, an absolute prohibition of holding assemblies in the precise time of day in a certain area cannot be justified. In each case, specific circumstances should be considered]”.*

We suggest that the words in the square brackets are inserted.

23. Para. 65: *“As a general rule, prohibitions on all assemblies anywhere in the capital; in any public location except a single [or several] specified place[(s)], either in a city, or outside the city centre; or prohibitions on assemblies in “all the streets in the city”, may not be imposed”.*

We suggest that the words in the square brackets are inserted.

24. Para. 66: *“The designation of the perimeters of places such as courts, parliament or other official buildings as areas where assemblies may not take place should generally be avoided, because these are public spaces. To the extent that assemblies in such places are prohibited, the restrictions must be specifically justified and narrowly circumscribed”.*

We suggest that the underlined words are deleted. We consider that the opportunity to hold peaceful assemblies in the immediate vicinity of all official buildings is particularly important. It allows its participants to express their opinion on the decisions by state bodies and to send their message directly to these bodies.<sup>3</sup>

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<sup>3</sup> This point is particularly important for Russia as Russian legislation prohibits holding public events “in the immediate vicinity” of certain buildings, in particular, “in the immediate vicinity” of buildings and land plots belonging to institutions that execute sentences of imprisonment, near residences of the President of the Russian Federation, and court buildings. In 2014, administrative liability was introduced for

25. Para. 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 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”.*

We suggest that the underlined words are deleted. We consider that including them into the General Comment creates a risk that States use this exception to prohibit face coverings arbitrarily.

26. Para. 74: *“Requirements for participants to cover the costs of policing or security or medical assistance or cleaning or [disruption of public transport traffic or vehicular or pedestrian movement] associated with peaceful assemblies are generally not compatible with article 21. These costs should as a rule be covered by public funds and should not be transferred to the participants [and/or organisers]. [Requirements to cover private companies’ losses of earnings associated with unintended disruptions of their economic activity due to peaceful assemblies are not compatible with Article 21]”.*

We suggest that the words in the square brackets are inserted.

27. Para. 75: *“Assembly organizers and participants are obliged to make reasonable efforts to comply with legal requirements, but they should be held accountable [, civilly or criminally,] for their own conduct only. Responsibility of organizers or participants for damage caused by other participants in an assembly should as a general rule not be imposed. If this is done, responsibility must be limited to what they could have foreseen and prevented with reasonable efforts. It is good practice for assembly organizers to appoint marshals where necessary, but such an obligation must not be imposed”.*

We suggest that the words in the square brackets are inserted.

We suggest that the underlined words are deleted. We suggest excluding the responsibility of the organisers for the actions of other people, without exceptions. This is because the ability to foresee and prevent the damage with reasonable efforts is a vague criteria and may be misused by authorities against organisers.<sup>4</sup>

28. Para. 76: *“Where criminal or administrative sanctions are used against participants in a peaceful assembly, such sanctions must be proportionate and cannot apply where their conduct is protected by the right”.*

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organizing, participating and calling for participation in «simultaneous mass presence» near the above buildings.

<sup>4</sup> For example, the European Court of Human Rights’ Guide on Article 11 provides that “the organisers of the event should not be held responsible for the conduct of the attendees (*Mesut Yıldız and Others v. Turkey*, § 34)” (para. 103).

We suggest clarifying that the term “criminal” should be interpreted with reference to the interpretation by the Committee of the term “criminal charges” mentioned in Article 14 of the ICCPR, regardless of what national legal systems understand under this term “criminal”.

We suggest adding that it is not acceptable to provide for a higher responsibility for repeated violations of formal rules related to organising assemblies or participating in them if such violations did not result in injury or death, or serious damage to property.

We suggest adding that penalty imposed for violence originating from participants (organisers) of an assembly should be proportionate towards the seriousness of the offence and the harm inflicted.

#### **f. Notification and authorization regimes**

29. Para. 81: *“A failure to notify the authorities of an assembly [or the mere fact that the assembly is not authorised] should not in itself be used as a basis for dispersing the assembly or arresting the participants or organisers, or the imposition of undue sanctions such as charging them with criminal offences. It also does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants”.*

We suggest that the words in the square brackets are inserted.

30. We suggest including the below points related to the notification and authorization regimes to the General Comment:

- If the authorities have refused to authorise a peaceful assembly for the reason that another event would occur at this place, the authorities (1) suggest another location for holding the assembly; (2) provide evidence that this event did take place<sup>5</sup> and that it was not possible to hold two events on the same time.
- Notification system should be transparent. The authorities should provide everyone concerned with an opportunity to familiarize themselves with information on the number of notifications of holding assemblies, as well as on the results of consideration these notifications and the reasons for not authorising assemblies.
- It is not acceptable to prohibit individuals from organising assemblies or participating in them due to the reason that they had been previously held liable for violations of the formal rules related to organising assemblies

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<sup>5</sup> For instance, in Russia the authorities often refuse to authorise an assembly in a particular place arguing that another event will take place there. However, no event takes place.

or participating in them if such violations did not result in injury or death, or serious damage to property.

- Cultural events should not have a pre-defined priority over other peaceful demonstrations.<sup>6</sup>
- Holding sports-related, cultural or religious events, regardless of their scope, should not lead to restrictions to the freedom of peaceful assembly.<sup>7</sup>

#### **g. Duties and powers of law enforcement agencies**

31. Para. 92: *“Wherever possible, only law enforcement officials who have been trained in the policing of assemblies should be deployed for that purpose. As a general rule, the military should not be used to police assemblies. The law enforcement officials responsible for policing assemblies should be suitably equipped, including where needed with appropriate less-lethal weapons and adequate personal protective equipment [ as result they should display a greater degree of tolerance to physical contact with participants of assemblies and bystanders]. States parties should ensure that all weapons, including less-lethal weapons, are subject to strict independent testing and should evaluate and monitor their impact on the rights to life and bodily integrity and the mental well-being of those affected”.*

We suggest that the words in the square brackets are inserted.

32. Para. 100: *“The State is responsible under international law for the actions and omissions of its law enforcement agencies and should promote a culture of accountability for law enforcement officials during assemblies. To enhance effective accountability, uniformed law enforcement officers should always display a form of identification during assemblies. [They should not wear face coverings unless it is justified by the need to protect them from violence]”.*

We suggest that the words in the square brackets are inserted.

33. Para. 105: *“The use of recording devices by law enforcement officials during assemblies, including through body-worn cameras, may play an important role in securing accountability. However, the authorities should have clear and publicly available guidelines to ensure that their use is consistent with international standards on privacy and does not have a chilling effect on participation in assemblies. [As a general rule, these recording devices should only be used in order to capture violent actions and ensure security]”.*

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<sup>6</sup> For instance, in Russia organisers of cultural events (such as music festivals, etc.) [are allowed](#) to notify the authorities about these events much more in advance than the organisers of peaceful assemblies. Thus, the organisers of public demonstrations are forced to choose the time and the place after those events have already been scheduled.

<sup>7</sup> For instance, in Russia opportunities for holding peaceful assemblies [were significantly restricted](#) during the Olympic Games in Sochi 2014 and the World Cup FIFA 2018.

We suggest that the words in the square brackets are inserted.

#### **h. Correlation between different articles of the CCPR**

34. Para. 113: *“At the same time, participants in peaceful assemblies must not infringe on the rights of others. This may for example include their freedom of movement (art. 12 (1)). Socio-economic rights, such as the right to health or to education, may be implicated by assemblies in or proximate to amenities such as hospitals or educational facilities”.*

We consider that this paragraph requires clarification as it provides too broad opportunities for authorities to ban peaceful assemblies.<sup>8</sup>

We further consider that there is a need to clarify the correlation between para. 113 and the following phrase from para. 53 of the General Comment: *“At the same time, since assemblies may entail by their very nature a certain level of disruption to ordinary life, such disruptions have to be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions”.*

#### **D. CONCLUSION AND ORAL CONTRIBUTION**

35. HRC “Memorial” and OVD-Info are is thankful to the Committee for its consideration of this contribution, and request an opportunity to present an oral contribution to the Committee during the meeting on 9 March 2020 to further clarify its various positions.

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<sup>8</sup> For example, laws of several Russian regions provide that peaceful assemblies near drugstores are absolutely prohibited.