

Submission on the Draft General Comment 37 of the Human Rights Committee on the right of peaceful assembly

This submission is made on behalf of the Child Rights International Network - CRIN (www.crin.org), February 2020.

Introduction

1. This submission focuses on aspects of the General Comment that are particularly relevant to children's right to peaceful assembly. Article 24 of the International Covenant on Civil and Political Rights provides that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor. This submission particularly draws on the interpretation of the right to peaceful assembly in line with Article 24, drawing on complementary international children's rights standards and making suggestions for amendments where appropriate.

General remarks

Online assemblies

2. We welcome the recognition within the draft General Comment at paragraph 11 of the implications of emerging technologies in presenting new spaces and opportunities as well as challenges for the exercise of the right of peaceful assembly. We also note the connected recognition at paragraphs 37 and 38 that associated activities that take place outside of the immediate scope of a gathering, happen online or rely upon digital services are also protected under article 21.

3. We would urge the Committee, however, to further recognise the potential for online assemblies that may fall within the scope of article 21.¹ We urge the Committee to recognise the ways that digital platforms can be used both as a way to facilitate the physical gathering of persons (offline assemblies), and as platforms where individuals come together to collectively express their views and opinions (online assemblies).

Recommendation:

6. Peaceful assemblies may take many forms, including demonstrations, meetings, processions, strikes, rallies, sit-ins and flash-mobs. Such gatherings are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches. They may take place outdoors or

¹ Human Rights Council, *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*, A/HRC/31/66, 4 Feb. 2016, para.10. See also Human Rights Council Resolution 38/11 on the promotion and protection of human rights in the context of peaceful protests, A/HRC/RES/38/11, adopted by consensus on 6 July 2018, Preamble. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/38/11

indoors. Freedom of assembly protections may also apply to analogous interactions taking place online.

Scope of the right of peaceful assembly

Equivalent protections of solitary protesters

4. In recent years, children across the world have made headlines by staging protests, many of them individual in nature. We are therefore particularly concerned about the protections afforded to individual protesters, especially since in some cases, in practice if not in law, single-person pickets might be the only forms of protests allowed without a permit. The protections enjoyed by individual protesters are, in our view, inextricably linked to those enjoyed by individuals exercising their right of peaceful assembly under article 21.²

5. We note that, in paragraph 15 of the draft General Comment, the Committee defines an assembly as necessarily including more than one participant in the gathering. We also note that the Committee considers that a single protester enjoys ‘comparable protections’ under the Covenant, for instance under the right to freedom of expression under article 19.

6. However, we submit that the Committee should elaborate on the protections offered to forms of individual protest that do not involve the gathering of a group of persons. In particular, the Committee should make it clear that ‘an individual protester exercising his or her right to freedom of expression, where physical presence is an integral part of that expression, should be afforded protections equivalent to the protections afforded to persons who gather together as part of an assembly’.³ For example, in light of the issues discussed in paragraphs 25 and 61 of the draft General Comment, States should facilitate individual protests at the protester’s preferred location and ‘within sight and sound’ of the intended audience. However, this does not mean that the same restrictions on assemblies automatically apply to individual protesters. For example, an individual protester should not be required to notify the authorities beforehand.⁴

Defining violent assemblies

7. Paragraph 19 of the draft General Comment defines violent assemblies, in contradistinction to assemblies that are peaceful. We note that the terms ‘peaceful’ and ‘violent’ apply to an assembly in its entirety and that the draft General Comment recognises

² *Popova v. Russian Federation* (CCPR/C/122/D/2217/2012), para. 7.3: ‘the right to peaceful assembly (...) is a fundamental human right that is essential for the public expression of an individual’s views and opinions (...)’

³ European Commission for Democracy through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines on Freedom of Peaceful Assembly*, 3rd Edition, 2019. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e). See para. 14.

⁴ European Court of Human Rights, *Tatár and Fáber v. Hungary*, Application nos. 26005/08 and 26160/08, 12 June 2012, para. 40: ‘(...) Indeed, the application of the notification rule to expressions – rather than only to assemblies – would create a prior restraint which is incompatible with the free communication of ideas and might undermine freedom of expression.’

that isolated acts of violence by some participants should not be attributed to other participants.⁵ We would therefore urge the Committee to retain the words “widespread and serious” within the paragraph, to recognise that the prevalence and degree of violence must meet a certain threshold in order to render the assembly itself violent, rather than purely the acts of individuals within the assembly. For the same reason, we also urge the Committee to retain the reference to ‘imminent’ violence in paragraph 21 of the draft.

Recommendation:

*19. A violent assembly is one that is characterized by **widespread and serious violence**. There is not always a clear dividing line between assemblies that are peaceful and those that are violent, but there is a presumption in favour of considering assemblies to be peaceful. (...)*

*21. Participants’ conduct may be deemed violent if, before or during the event, the participants are inciting others to the **imminent** use of unlawful force, the participants have violent intentions and plan to act on them, or violence is imminent. (...)*

Obligations of States parties in respect of the right of peaceful assembly

Positive obligations to protect children’s right to peaceful assembly

8. As recognised within the draft General Comment, “States parties ... have the positive duty to *facilitate* peaceful assemblies, and to make it possible for participants to achieve their legitimate objectives.” Children exercising their right to peaceful assembly may face age specific barriers to exercising their right imposing an obligation on the State to directly address the needs of children to ensure that it is meeting this positive obligation⁶ as well as other groups that may face barriers in realising their right to peaceful assembly.

9. CRIN encourages the Committee to recognise this principle within paragraph 27 and to address specific instances in which States will have particular obligations to children when relevant throughout the General Comment.

Recommendation:

27. States parties moreover have the positive duty to facilitate peaceful assemblies, and to make it possible for participants to achieve their legitimate objectives ... For example, they may need to block off streets, redirect traffic, provide security, or identify an alternative site where the assembly may be

⁵ A/HRC/31/66, 4 Feb. 2016, para.9: ‘Even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain all the other rights, subject to the normal limitations. No assembly should thus be considered unprotected.’

⁶ See UN Committee on the Rights of the Child, General Comment No.20 (2016) on the implication of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, para. 45; UN Committee on the Rights of the Child, *Concluding observations: Syrian Arab Republic*, CRC/C/SYR/CO/3-4, 9 February 2012, para. 46-47. See also Daly, *Demonstrating Positive Obligations: Children’s rights and peaceful protest in international law*, p. 29.

conducted. Realising this positive obligation also requires measures to meet the specific needs of individuals or groups, including children and people with disabilities. Where needed, States must also protect participants against possible abuses by non-State actors, such as interference or violence by other members of the public, counter-demonstrators [and private security providers].

Transparent decision-making and public awareness

10. The General Comment recognises at paragraph 32 the need to ensure the existence of a functioning and transparent legal and decision-making process to respect and ensure peaceful assemblies as well as public awareness about what the law provides with respect for the right to assemble. For this right to be a reality for children, the process for decision-making must be accessible and comprehensible for children, and public awareness must particularly address children, including through education programmes.

Recommendation:

32. ...States must ensure public awareness about what the law provides with respect to the right to assemble; what, if any, procedures those wanting to exercise the right have to follow; who the responsible authorities are; the rules applicable to those officials; and the remedies available in the case of alleged violations of rights. States should adopt public education campaigns that specifically target children, including through schools, to ensure that children grow up able to exercise their right to peaceful assembly and to engage effectively with the legal and decision making system established to ensure respect for peaceful assemblies.

Obligations of private companies

11. We note that businesses can have a profound impact on children's right of peaceful assembly. One clear example is technology companies' ability to restrict assembly online, for example by banning certain apps on users' devices. CRIN therefore encourages the Committee to elaborate on businesses' responsibility to respect human rights. We urge the Committee to emphasise that this responsibility entails concrete duties: businesses should avoid causing adverse human rights impacts, mitigate adverse impacts that are directly linked to the business, and provide for the remediation of the adverse impacts that they have caused or contributed to.

Recommendation:

35. States parties hold the primary responsibility as far as the realization of the right of peaceful assembly is concerned. Private entities and the broader society, however, may be expected to accept some level of disruption, if this is required for the exercise of the right of peaceful assembly. Business enterprises have a responsibility to respect human rights, including the right of peaceful assembly. This responsibility requires that business enterprises:
(a) Avoid causing or contributing to adverse human rights impacts through

their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.⁷

Restrictions on the right of peaceful assembly

Child-specific restrictions and the right to peaceful assembly

12. While in many societies restrictions to the right to peaceful assembly extend to the population as a whole, limits may also apply specifically to children. These restrictions deny children's right to exercise their right to peaceful assembly under the ICCPR and CRC. These restrictions may also amount to prohibited discrimination, most egregiously when they take the form of status offences, which are clearly prohibited by the Convention on the Rights of the Child and related human rights standards.⁸ The imposition of curfews, for example, typically apply only to children, preventing them from entering public spaces during certain hours and serving to stigmatise and criminalise young people for engaging in public life as well as obstructing them from forming friendships and getting involved in society.⁹ The realisation of the right to peaceful assembly for all requires that children not be excluded from participating because of their age.

Recommendation:

40. The right of peaceful assembly is not absolute.... The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations to it. Restrictions should not be aimed at discouraging participation in assemblies, potentially causing a chilling effect. Restrictions must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin and States should not impose age limits preventing children from organising or participating in peaceful assemblies.

Penalties and sanctions

⁷ Guiding Principles on Business and Human Rights, A/HRC/17/31, annex.

⁸ Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, CRC/C/GC/24, 18 September 2019; United Nations Guidelines for the Prevention of Juvenile Delinquency para. 56; *Report of the Independent Expert leading the United Nations global study on children deprived of liberty*, A/74/136, para. 108.

⁹ CRIN, *Discrimination and Disenfranchisement: A global report on status offences*, 2016. Available at:

<https://archive.crin.org/en/library/publications/discrimination-and-disenfranchisement-global-report-status-offences.html>

13. The draft General Comment notes the requirement that criminal and administrative sanctions against participants must be proportionate and cannot apply where the conduct is protected by the right. During 2019, a number of schools and authorities in multiple countries have imposed sanctions on children who have left classes to take part in climate protests.¹⁰ In a number of cases, children who have participated in protests in this context have faced punishment from schools, whether in the form of detentions, suspension, or the academic consequences of truancy being recorded. These penalties amount to a restriction on children's exercise of the right to expression, association and assembly. We urge the Committee to recognise the age specific forms that penalties and sanctions may take for children who exercise their right to peaceful assembly.

Notification and authorisation regimes

14. We welcome the recognition within the draft General Comment that notification requirements must not be used to stifle peaceful assemblies and that they should be proportionate and not unduly burdensome. We urge the Committee to address the ways in which children engage with notification procedures to recognise the full extent of children's right of peaceful assembly, which includes children's right to organise assemblies. If notification systems for the organisation of assemblies are in place, States should ensure that these systems are accessible and appropriately respond to children who may have to use them.

Recommendation:

*80. Notification systems entail that those intending to organize a peaceful assembly are required to inform the authorities accordingly in advance and provide certain salient details. Such a requirement is permissible to the extent necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others. **There should be no legal barriers to children organising and notifying peaceful assemblies and States should create child-friendly notification processes. (...)***

15. The Committee acknowledges in paragraph 80 that the enforcement of rules on prior notification may not become an end in itself. It follows that the failure to notify should not render the assembly unlawful and must not by itself lead to restrictions on participants or dissolution of a peaceful assembly.¹¹

Recommendation:

¹⁰ See, for example in Germany at <https://www.thelocal.de/20190709/fridays-for-future-student-protesters-face-fines-in-western-germany-for-skipping-school>; in Switzerland at <https://www.rts.ch/info/suisse/10283341-quelles-consequences-pour-les-eleves-participant-a-la-greve-du-climat.html>; in New Zealand at <https://www.stuff.co.nz/environment/climate-news/111013724/students-who-strike-for-climate-change-will-be-marked-as-truants-principals-say>; in the US at <https://manualredeye.com/71350/news/local/climate-change-walkout-suspension/>

¹¹ OSCE Guidelines on Freedom of Peaceful Assembly 2019, para. 112.

81. A failure to notify the authorities of an assembly *should not render participation in the assembly unlawful, and 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.* (...)

16. As notification regimes for assemblies are meant to assist the State in terms of crowd control, there is no legitimate reason to require advance notification from individual demonstrators. Similarly, notifications should not be required for spontaneous assemblies and online assemblies.

Recommendation:

82. *In general, assemblies should be excluded from notification regimes where the impact of the assembly on others can reasonably be expected to be minimal, for example because of the nature, location or limited size or duration of the assembly. Individual demonstrators should not be required to provide advance notification to the authorities of their intention to demonstrate.¹² Notification must not be required for spontaneous assemblies since they do not allow enough time to provide such notice. Where a lone demonstrator is unexpectedly joined by another or others, and the size of the assembly increases, the event should be treated as a spontaneous assembly.¹³ Notification must also not be required for online mobilisation of assemblies¹⁴.*

Duties and powers of law enforcement agencies

Training of law enforcement

17. The draft General Comment recognises the obligation to ensure that law enforcement officials are appropriately trained to police assemblies. The recognition of the need to tailor this training to respect the rights of children present during assemblies would bring additional value to the guidance provided to States and ensure the General Comment complements existing recommendations of the Committee on the Rights of the Child with regards to the training of law enforcement officials.

Recommendation:

92. *Whenever possible, only law enforcement officials who have been trained in the policing of assemblies should be deployed for that purpose. Law enforcement officials should be trained to operate according to child-friendly policies and practices to ensure they respond appropriately to children who are present or may be present during an assembly.*

¹² OSCE Guidelines on Freedom of Peaceful Assembly 2019, para. 114

¹³ Ibidem.

¹⁴ OSCE Guidelines on Freedom of Peaceful Assembly 2019, para. 117.

Use of deprivation of liberty

18. The draft General Comment clearly identifies the relationship between article 21 and restrictions on the use of deprivation of liberty. However, specialised and distinct human rights standards govern the use of deprivation of liberty for children that are not recognised within the current draft. The Convention on the Rights of the Child clearly provides that “the arrest detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest period of time”, while additional limits govern the use of detention in specific contexts, including the use of administrative and preventive detention.¹⁵ The use of counter-terrorism legislation and powers in a manner that restricts the exercise of the right to peaceful assembly is also of particular relevance to the use of detention in this context.¹⁶

19. We urge the Committee to note the specialised protections that apply with regards to the use of deprivation of liberty of children in this context.

Recommendation:

93. Preventive detention of targeted individuals, in order to keep them from participating in assemblies, may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly. It may be done only in exceptional cases and 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 where other measures to prevent violence from occurring will clearly be inadequate. Practices of indiscriminate mass arrest prior to, during or following an assembly, are arbitrary. Deprivation of liberty of children may only be used as a last resort for the shortest appropriate period of time¹⁷ and preventive and administrative detention of children should not be imposed on children.¹⁸

¹⁵ Independent Expert Manfred Nowak, *United Nations Global Study on Children Deprived of Liberty*, p. 652.

¹⁶ For discussion in the context of children’s rights, see CRIN, *Caught in the Crossfire: An international survey of anti-terrorism legislation and its impact on children*, 2018. Available at: <https://archive.crin.org/sites/default/files/caughtinthecrossfire.pdf>.

¹⁷ Convention on the Rights of the Child, Article 37(b).

¹⁸ Independent Expert Manfred Nowak, *United Nations Global Study on Children Deprived of Liberty*, p. 652.