



HUMAN RIGHTS AND JUSTICE CENTRE

General Comment 37

on

Right to Peaceful Assembly

(Article 21 of the International Covenant on Civil and Political Rights)

WHAT IS GENERAL COMMENT 37?

General Comment 37 sets out progressive principles and standards on a broad range of issues relating to the right of peaceful assembly and the ability to engage in protests, meetings, and other gatherings. The General Comment must be considered to advance the full respect and facilitation of this right to peaceful assemblies. You can access the full text [here](#).

In this document, Human Rights and Justice Centre (HRJC) has summarized the text of General Comment No. 37 to be used as an advocacy tool. The concerned stakeholders are free to use this version in their advocacy, also available on the [HRJC website](#) in a soft version.

1. THE ESSENTIAL

The right of peaceful assembly is maintained in **Article 21 of the International Covenant on Civil and Political Rights (ICCPR)** which states that *“the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”*.

Definition. The right of peaceful assembly is defined as a fundamental human right that protects the non-violent gathering by persons for specific purposes, principally expressive ones. It constitutes an individual right that is exercised collectively. Inherent to the right is thus an associative element. It applies both to physical assemblies of people or to remote participation or organization, as well as to organized or spontaneous assemblies.

Place of expression. Peaceful assemblies are protected wherever they take place: outdoors, indoors, and online (e.g., on the Internet); in public and private spaces; or a combination thereof.

Forms of expression. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils, and flash mobs. They are protected whether they are stationary, such as pickets, or mobile, such as processions or marches.

Owners of the rights. Everyone has the right to peaceful assembly: citizens and non-citizens alike. It may be exercised by, for example, foreign nationals, migrants (documented or undocumented), asylum seekers, refugees, and stateless persons.

Duties of the States. The recognition of the right of peaceful assembly imposes a corresponding obligation on state parties to respect and ensure its exercise without discrimination. This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the peaceful assemblies, by blocking off streets or re-directing traffic; protecting participants from abuse, including interference or violence by members of the public.

2. HOW DO YOU KNOW WHETHER OR NOT SOMEONE’S PARTICIPATION IN AN ASSEMBLY IS PROTECTED?

We must first consider whether or not the individual's conduct falls within the scope of protection offered by the Convention (2.1.), and whether or not any restrictions imposed by the State are legitimate (2.2.).

2.1. The participation in a peaceful meeting

To be protected, participants must comply with the prohibition of violence (2.1.1.) in order to benefit from the guarantee and protection of their rights by the State (2.1.2.).

2.1.1. The prohibition of violence

The right of peaceful assembly may not be exercised using violence which means the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property. Peaceful assemblies may not be used for propaganda for war, or for advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In that respect:

- Isolated acts of violence by some participants should not be attributed to others, to the organizers or to the assembly as such, but where it is manifestly widespread within the assembly, participation in the gathering as such is no longer protected;
- Violence against participants in a peaceful assembly by the authorities, or by agents provocateurs acting on their behalf, does not render the assembly non-peaceful;
- Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to “violence”. In addition, the carrying by participants of objects that are or could be viewed as weapons or protective equipment such as gas masks or helmets is not necessarily sufficient to deem those participants’ conduct violent.



2.1.2. The corollary guarantees & protection by the State

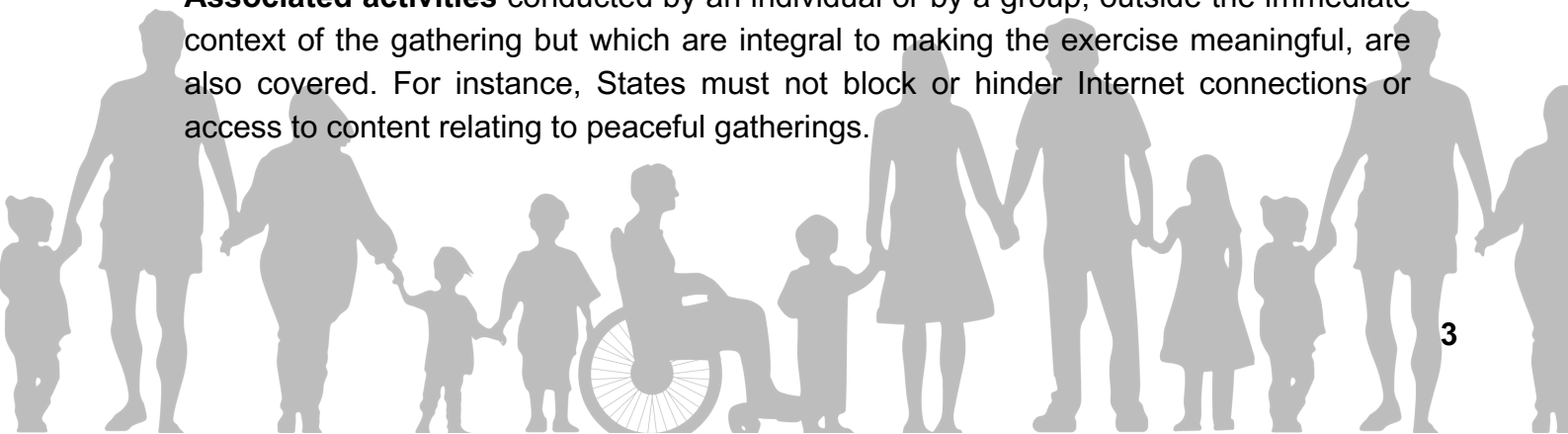
As a neutral agent, **States must:**

- Leave it to the participants to determine freely the purpose or any expressive content of an assembly. In addition, participants must as far as possible be enabled to conduct assemblies within the sight and sound of their target audience;
- Facilitate peaceful assemblies and make it possible for participants to achieve their objectives and have no undue interference;
- Protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public, counterdemonstrators, and private security providers but ensure counterdemonstrations as assemblies in their own right, while preventing undue disruption of the assemblies to which they are opposed;
- Ensure the equal and effective facilitation and protection of the right without any discrimination for example on the basis of race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status, disability, sexual orientation or gender identity, or other status.



Moreover, **journalists, human rights defenders, election monitors and others are entitled to protection.** They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not face reprisals or other harassment, and their equipment must not be confiscated or damaged and that even if an assembly is declared unlawful or is dispersed.

Associated activities conducted by an individual or by a group, outside the immediate context of the gathering but which are integral to making the exercise meaningful, are also covered. For instance, States must not block or hinder Internet connections or access to content relating to peaceful gatherings.





2.1. The legitimacy of restrictions on the right to peaceful assembly

LEGALITY. Restrictions must be imposed through law or administrative decisions based on law.

NECESSITY AND PROPORTION.

Restrictions must be necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect. The prohibition of a specific assembly can be considered only as a measure of last resort. Blanket restrictions on peaceful assemblies are presumptively disproportionate.

LEGITIMATE GROUNDS.

Restrictions can only be justified in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. States parties should not rely on a vague definition of these notions to justify overbroad restrictions on the right of peaceful assembly. If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible.

IMPLEMENTING THE RESTRICTIONS

- Ensure that restrictions on peaceful assemblies do not suppress political opposition, challenges to authority, or calls for democratic changes, self-determination, or constitutional reform.
- Flags, uniforms, signs, and banners should generally be considered legitimate forms of expression, except when they promote discrimination, hostility, or violence.
- The possibility of a hostile public reaction does not justify restricting peaceful assemblies.
- Avoid designating certain public spaces (e.g., courts, parliaments) as off-limits for assemblies; allow gatherings in public spaces.
- Allow participants to choose whether to use equipment like posters, megaphones, musical instruments, or projectors to convey their message during peaceful assemblies.
- Do not limit the number of participants in assemblies.
- Allow anonymity for participants unless there are reasonable grounds for arrest.

In the event of a restriction, it must be possible to take legal action easily to obtain compensation for a restriction that is illegal or does not respect the principles of necessity and proportionality.

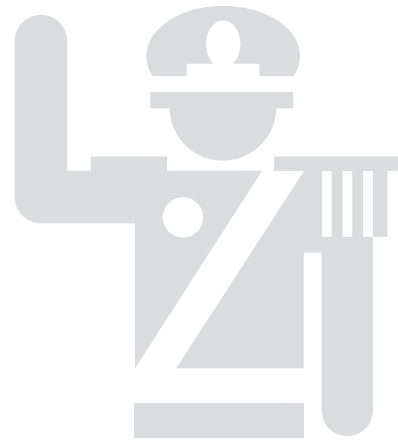


Notification regime. Having to apply for permission to organize an assembly is contrary to the idea that peaceful assembly is a basic right. While notification systems are permitted to assist authorities in facilitating assemblies, such procedures should not be unduly burdensome. Lack of notification should not render an assembly unlawful or be used as a basis for dispersing the assembly or imposing criminal penalties on participants or organizers.

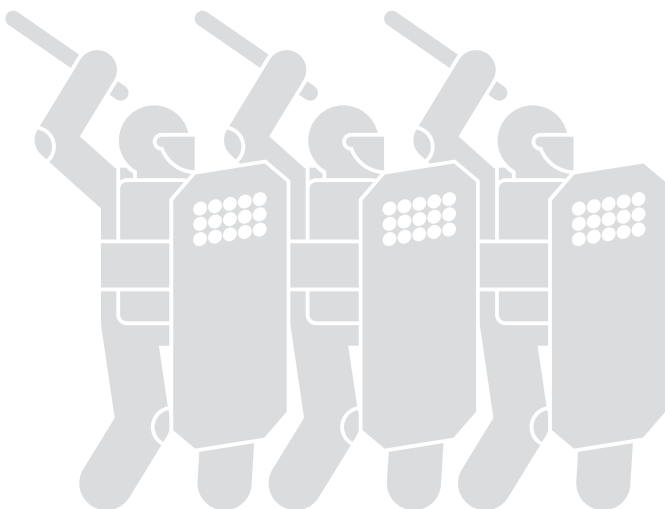
3. DUTIES AND POWERS OF LAW ENFORCEMENT AGENCIES

DUTIES OF LAW ENFORCEMENT AGENCIES

- Only law enforcement officials trained in the policing of assemblies should be deployed for this purpose. The military should not police assemblies.
- Law enforcement must respect and ensure the exercise of the fundamental rights of organizers and participants, while also protecting journalists, monitors and observers, medical personnel, and other members of the public, as well as public and private property, from harm;
- They should seek to de-escalate situations that might result in violence. They are obliged to exhaust non-violent means and to give prior warning if it becomes absolutely necessary to use force, unless doing either would be manifestly ineffective. Only the minimum force necessary may be used where it is required for a legitimate law enforcement purpose during an assembly.



Where there are **allegations that law enforcement officials have engaged in the unlawful use of force or other violations concerning assemblies, States must investigate such incidents effectively, impartially, and in a timely manner.**





POWERS OF LAW ENFORCEMENT AGENCIES

- Powers of “*stop and search*” or “*stop and frisk*”, applied to those who participate in assemblies, or are about to do so, must be exercised based on reasonable suspicion of the commission or threat of a serious offence.
- Containment (“*kettling*”), where law enforcement officials encircle and close in a section of the participants, may be used only where it is necessary and proportionate to do so, in order to address actual violence or an imminent threat emanating from that section.
- Only in exceptional cases may an assembly be dispersed. Dispersal may be resorted to if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures, such as targeted arrests. In all cases, the law enforcement rules on the use of force must be strictly followed.

USE OF WEAPONS

- **Less-lethal weapons** with wide-area effects, such as tear gas and water cannons, tend to have indiscriminate effects. When such weapons are used, all reasonable efforts should be made to limit risks, such as causing a stampede or harming bystanders. Such weapons should be used only as a measure of last resort, following a verbal warning, and with adequate opportunity given for assembly participants to disperse. Tear gas should not be used in confined spaces.
- **Firearms** should not be used for the policing of assemblies. They must never be used simply to disperse assemblies. International law dictates that law enforcement officials may only use firearms during assemblies when there is an imminent threat of death or serious injury to targeted individuals. This same minimum threshold should apply to the use of rubber-coated metal bullets, given the risk they pose to life. When the potential for violence exists, authorities must ensure access to adequate medical facilities. It is never permissible to fire indiscriminately or use firearms in fully automatic mode during assembly policing.

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<https://www.hrjc.org.np>

contact@hrjc.org.np

+977 9819033495