
OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

February 14, 2020

Ref: Inputs from the Special Rapporteurship for Freedom of Expression of the IACHR for the General Comment No. 37 on Article 21: right of peaceful assembly - Revised draft prepared by the Rapporteur, Mr. Christof Heyns

Dear Human Rights Committee,

I have the honor to address you as Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) regarding the communication sent on November 14, 2019 by your Office to the Inter-American Commission, in which it requests 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 appreciate this important opportunity for collaboration with the Office of the High Commissioner for Human Rights and share the standards developed by the IACHR and its Special Rapporteurship for Freedom of Expression in the report approved in 2019 on “Protests and Human Rights,” in which this Office addressed, among others, the applicable legal framework, the obligations of the State to respect, protect, facilitate and guarantee rights involved in protest; the subject of protest and the internet; access to information, and states of emergency¹.

The Americas, far from offering a picture of consensus regarding the protection of demonstrations and protests, has been—and continues to be—the scene of repression, dispersal, and limitation of the exercise of these rights in the public sphere, the product of a deep-rooted conception that considers citizen mobilization to be a form of disruption of the public order or, even worse, a threat to the stability of democratic institutions.

In this regard, we salute the initiative of General Comment No. 37 as a step forward the consolidation of a universal legal framework for the protection of the right to peaceful assembly. We are sure it will contribute and be of great use to those responsible for establishing adequate national legal frameworks or for judicial authorities who must adjudicate matters related to protest, as well as a reference for the security forces that have the obligation to protect and manage the staging of demonstrations and protests.

In this context, this note will address the standards developed by the Regional System as well as those developed by the Universal System on different matters, and make specific or general references to the text of the General Comment No. 37. Therefore, it will follow a thematic logic, instead of going in order through the text of General Comment No. 37. The last section of this note will include some specific recommendations in wording for the text.

i. General Observations to the General Comment No. 37

Overall, we consider the Comment succeeds in intertwining the exercise of the right to peaceful assembly to other essential rights and freedoms. Indeed, the rights to freedom of expression, peaceful assembly, and

¹ The report on Protest and Human Rights was the result of the ongoing monitoring of the situation of the freedoms which protect the exercise protests in the region and the opening of dialogue with States and civil society. For more than two years the IACHR and its Office of the Special Rapporteur conducted academic visits and consultations with social and academic organizations, experts who contributed information and reflections to the Report.

association guarantee and protect various forms—individual and collective—of publicly expressing opinions, dissenting, demanding compliance with social, cultural, and environmental rights, and affirming the identity of groups that have historically been discriminated against. According to the instruments of the inter-American system, the joint exercise of these fundamental rights contributes to a more robust democracy.

In addition, the Comment sets forward essential components for the full guarantee of the exercise of the right to peaceful assembly central role in its role of defending democracy and human rights. Some of these components worth underlining are: the principle of non-discrimination in the management of protest, the role of journalists and the right under which their work is protected, the principle of sight and sound, the restrictions and necessary criteria to apply the use of force in this context, the protection to online protests; and the challenges posed by surveillance and intelligence tasks.

Finally, for better ensuring the maximum level of protection of the rights involved, we would like to suggest the revision in the use of words such as “in general”, “generally”, “should”, or “unduly”, which may **in some paragraphs** lead to uncertainty in the compliance with standards.

ii. Standards relevant to General Comment No. 37

1. Protests involving a single person

The inter-relationship between freedom of assembly and other civil and political rights is especially important in relation to protest activities. Assemblies are not always acts of protest, and individuals and groups may protest without assembling.² In its recent report “Protest and Human Rights”, the IACHR notes that protest is a form of individual or collective action aimed at expressing ideas, views, or values of dissent, opposition, denunciation, or vindication (...) which may involve a single person, small groups of individuals, or multitudinous groups in which thousands of people may be coordinated (...)”³. The Venice Guidelines set as examples of single person protests “letter-writing campaigns, strike actions, organizing and signing petitions, registering a ‘protest vote’, and displaying flags and other types of symbol”.

In this sense, this Office supports the consideration in paragraph 15 of the General Comment to reaffirm that “a single protester enjoys comparable protections [than participants gathered in an assembly] under the Covenant, for example under article 19”.

2. The right to participate in protest without prior authorization⁴

The IACHR has considered that the exercise of freedom of assembly through social protest should not be subject to government authorization or excessive requirements that make it difficult to carry it out. Legal requirements underlying the prohibition or limitation of a meeting or demonstration, such as the requirement of prior permission, are not compatible with freedom of assembly or the exercise of freedom of expression in the inter-American system.

Prior notice, generally justified by States on the basis of the need to provide greater protection to a demonstration, cannot function as a covert authorization mechanism. The IACHR maintained in its report on the “Criminalization of the Work of Human Rights Defenders” that the requirement of prior notification must not be confused with the requirement of prior authorization granted in a discretionary manner, which must not be established in the law or practice of the administrative authorities, even when it comes to public spaces.

The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association has been emphatic in stating that he “believes that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities (...), but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly

² OSCE/ODIHR - Venice Commission, Guidelines on Freedom of Peaceful Assembly, 3rd ed., 2019, para. 9

³ IACHR, Report on Protest and Human Rights, 2019, para. 1-7.

⁴ IACHR, Report on Protest and Human Rights, 2019, para. 56-62

and to take measures to protect public safety and order and the rights and freedoms of others.⁵ At the same time, the existence of mechanisms requiring demonstrators to notify the authorities in advance of the place, date, and time of the protest is only compatible with Article 13 of the ACHR when States require it in order to be able to take measures to protect demonstrators and thus facilitate social protest.

Similarly, when notification procedures are very bureaucratic or intervene unnecessarily or disproportionately in determining the place, time, and manner of a protest, it has a chilling effect on the exercise of this right. With regards to the requirement of prior notice to hold a protest, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, has said that “such a notification should be subject to a proportionality assessment, not unduly bureaucratic.”⁶ In particular, prior notification should be requested only for large gatherings or events that could cause transit disruptions in order to facilitate their conduct and protect demonstrators.

The notable exception to this principle is that of spontaneous peaceful assemblies where organizers are unable to comply with the requisite notification requirements or where there is no existing or identifiable organizer. Fundamentally, the UN Special Rapporteur reiterates that “should the organizers fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions or administrative sanctions resulting in fines or imprisonment”.⁷

In this sense, existing standards in what refers to the implementation of authorization or notification procedures for the exercise of this right could be further reflected in paragraphs 82 and 84 of the General Comment.

3. Spontaneous assemblies and identified organizers

In this regards, paragraph 16 of the Comments states that “peaceful assemblies are often organized well in advance”, which somehow makes spontaneous assemblies the exception to a rule. This Office suggests rephrasing the paragraph and making clearer the positive obligations of the States to protect both, organized and spontaneous assemblies; and give count of the fact that spontaneous assemblies are not only an exception. In fact, in its 2019 Report, the IACHR recommended that States take account of the fact that there are events in which it is not possible to identify the organizers and that, although announced in advance, take place in a highly improvised and spontaneous manner.⁸ UN Special Rapporteurs Maina Kiai and Christof Heyns stated: “This applies equally in the case of spontaneous assemblies, where prior notice is otherwise impracticable or where no identifiable organizer exists. Spontaneous assemblies should be exempt from notification requirements, and law enforcement authorities should, as far as possible, protect and facilitate spontaneous assemblies as they would any other assembly.”⁹

Furthermore, the IACHR recommends that States take also note that organizations and organizers of a demonstration or protest should not be held responsible in their capacity as such for any acts of violence that may be committed by participants and third parties.¹⁰ Paragraph 75 of the General Comments, among others, should take into account these considerations.

4. The right to choose the content and messages of the protest¹¹

The Office of the Special Rapporteur for Freedom of Expression has stated that, in principle, all forms of speech are protected by the right to freedom of expression, regardless of its content and degree of acceptance

⁵ Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 28;

⁶ Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 28;

⁷ Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 29

⁸ IACHR, Report on Protest and Human Rights, 2019, para. 61

⁹ 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 February 2016, para. 23.

¹⁰ IACHR, Report on Protest and Human Rights, 2019, para. 364

¹¹ IACHR, Report on Protest and Human Rights, 2019, para. 63-70

by society and the State. Freedom of expression within the framework of social protests must be guaranteed not only in terms of the dissemination of ideas and information received favorably or considered inoffensive or neutral, but also in terms of those that offend, shock, disturb, are unpleasant, or disturb the State or any sector of the population because of the type of complaint they involve.

The Venice Guidelines also point on that direction, noting that the mere fact that the content or manner in which an assembly is conducted may annoy, offend, shock or disturb others, or that such assembly may cause some temporary disruptions of daily life, or affect the aesthetic appearance of a public space, does not by itself amount to a disruption of public order. For that reason, prior restrictions imposed due to the possibility of minor, isolated or sporadic incidents of violence are likely to be disproportionate.¹²

This general presumption of coverage of all expressive speech is explained by the State's primary duty of content-neutrality and, as a consequence, by the necessity to guarantee that, in principle, there are no persons, groups, ideas or means of expression excluded a priori from public debate. Within the framework of the Universal System, the Special Rapporteur on the rights to freedom of peaceful assembly and association has similarly stated that "Any restriction imposed on the nature or content of the message the organizers and participants want to convey, especially in relation to criticism of Government policies, should be proscribed, unless the message constitutes 'incitement to discrimination, hostility or violence.'"¹³

Similarly, the IACHR has taken the view that, without prejudice to the presumption of ab initio coverage, there are certain types of speech which, by virtue of express prohibitions embodied in international human rights law, do not enjoy protection under Article 13 of the American Convention¹⁴ within the framework of a social protest. Specifically, this includes war propaganda and hate speech that constitutes incitement to violence on discriminatory grounds such as sexual orientation, gender, race, religion, or nationality.

As noted in the report, these restrictions must be backed up by actual, truthful, objective and strong proof that the person was not simply issuing an opinion (even if that opinion was harsh, unfair, or disturbing), but that the person had the clear intention of promoting illegal violence or any other similar action against (...) people, as well as the ability to achieve this objective, and that this entails a real risk of harm to people belonging to these groups.

In this line, paragraphs 54-57 of the General Comment come in line with inter-American and international standards. However, paragraph 21 should come in line with the standards and restrict the situations under which a gathering is no longer protected under article 21. Accordingly, Paragraph 22 should be deleted (Option 2).

5. The right to choose the time and place of the protest¹⁵

In regards to the time, place and manner of a protest, the IACHR has understood that "Restrictions should be exceptional, defined on a case-by-case basis and justified on the basis of the protection of persons. Any State interference in the time and place of a demonstration should meet the criteria of necessity and proportionality in a democratic society. Therefore, as a general rule, the right to demonstrate and protest includes the right to choose the time, place, and manner of doing so,¹⁶ (...) in accordance with the principle known as sight and sound.

In this regard, although in general lines the Comment upholds this principles (paragraph 25 for instance), the document should better warn against disproportionate restrictions. For instance, paragraph 4 of the Comments may limit protected gatherings to "publicly accessible spaces". The suggestion is to include both

¹² OSCE/ODIHR - Venice Commission, Guidelines on Freedom of Peaceful Assembly, 3rd ed., 2019. Grounds for Restricting Freedom of Peaceful Assembly, para. 139.

¹³ Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 59.

¹⁴ Article 13.5 of the American Convention on Human Rights reads: "Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

¹⁵ IACHR, Report on Protest and Human Rights, 2019, para. 71-80

¹⁶ European Court of Human Rights, *Sáska v Hungary*. Final 27/2/2013. p. 21.

public **and private spaces**.¹⁷ In fact, later in paragraph 11, the Comment does support this standard: “Moreover, there is increased private ownership of public spaces. Considerations such as these need to inform a contemporary understanding of the legal framework required to give full effect to article 21”, and in paragraph 67: The interests of private owners have to be given due weight, but may have to be limited if the participants have no other reasonable way to convey their message to their target audience”. On this regard, UN Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, noted: An “assembly” is an intentional and temporary gathering in a private or public space for a specific purpose. It therefore includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in.¹⁸

Furthermore, additional paragraphs may further bring into consideration the cited principle of sight and sound: For instance, in paragraph 63, in the excerpt “(...) assemblies held at night in residential areas might have an undue impact on the lives of those who live nearby”¹⁹. In paragraph 66, which refers to the designation of perimeters where protest may not take place, the wording “should generally be avoided” could be modified to a more restrictive language as for example “can only be justified in exceptional circumstances”²⁰.

Finally, although an assembly has generally been understood as a physical gathering of people, the Human Rights Council has recognized that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online²¹. Paragraph 15 of the Comment does foresee this provision. However, the mention of **online assembly** could be added to paragraph 6.

The IACHR recognizes as well the exercise of online protest. For example, #metoo was a collective expression, protected by the right to freedom of expression and to peaceful assembly. In its report it notes how In recent years there have been various instances of protest on the Internet that include email chains, petitions, demonstrations, and campaigns developed on social networks, etc²². On this topic, UN Special Rapporteur Maina Kiai has reiterated that States have the obligation to ensure that online assemblies are facilitated in accordance with international human rights standards.²³

6. The right to choose the mode of protest; Scope of the provision on “peaceful unarmed exercise”

Regarding the definition of “peaceful” which is referenced to in paragraphs 16 to 22 of the General Comment; in its recent thematic report, the IACHR noted that, whatever the form of protest, the inter-American instruments establish that the right of assembly must be exercised peacefully and without arms. “The qualifier “peaceful” must be understood, in any case, in the sense **that persons who commit acts of violence** may see their right to demonstrate restricted, temporarily and individually. (...) At the same time, the IACHR

¹⁷ For example, In the case of school takeovers and occupations as a way for students to voice their criticisms, demands, and complaints to State authorities, the Commission has stressed that these are legitimate forms of exercising the right to social protest, particularly in contexts where children and adolescents lack other channels to express their grievances about policies that affect them. IACHR, Report on Protest and Human Rights, 2019, para. Para. 147.

¹⁸ Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 2012, para. 24.

¹⁹ Such precision is relevant in Latin America, where pots and pans “*cacerolazo*” protests take place. *Cacerolazos* are a type of protest that take place from people’s balconies in residential areas, generally in the context of declared states of emergency or in the aftermath of dissolved protest.

²⁰ In addition to the principle of *sight and sound*, the Committee should take into consideration that protests are indispensable for democratic consolidation and therefore constitute as legitimate a use of public space as any other. Thus, they cannot be suppressed as a way of guaranteeing other more routine uses of these spaces, such as commercial activity or the circulation of persons and vehicles. In that regard, the IACHR has emphasized that streets and squares are privileged places for public expression. (IAHR Report para. 72). See also OSCE/ODIHR - Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2nd ed., 2010, p. 32, para. 20: Participants in public assemblies have as much a claim to use such sites for a reasonable period as anyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public space as the more routine purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic).

²¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on the Rights to freedom of peaceful assembly and of association, A/HRC/41/41, 2019, párr. 11. Report of the United Nations High Commissioner for Human Rights on Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, A/HRC/22/28, 2013.

²² IACHR, Report on Protest and Human Rights, 2019, para. 297

²³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/29/25, Add 1, para. 34

has also documented that the excessive use of force is often a major source of violations of these same rights.²⁴

Nevertheless, the Commission has stated that the peaceful and unarmed condition provided for in the inter-American instruments as a requirement for the exercise of the right of assembly does not mean that a demonstration can be deemed non-peaceful based on the actions of a few people. When some individuals commit acts of violence in the context of a protest, **they should be singled out**; but other demonstrators retain their right to peaceful assembly. Consequently, no gathering should be considered unprotected.²⁵ Furthermore, this Commission has held that **“when a demonstration or protest leads to situations of violence it should be understood that the state was not capable of guaranteeing the exercise of this right.** As already noted, the state’s obligation is to ensure the processing of the demands and the underlying social and political conflicts so as to channel the claims.²⁶

In the latest 2019 report, the IACHR has also stated that “bandanas, masks, hoods, caps, backpacks, and other types of clothing and accessories are very common at public demonstrations and cannot be considered sufficient indicators of a threat of violence, nor can they be used as grounds for the dispersal, arrest, or repression of demonstrators”. (IACHR Report Parr 88). In fact, in a joint letter sent by the IACHR, and UN Special Procedures to Brazil the Special Rapporteurs manifested concern on a recently passed decree in Sao Paulo which criminalized the use of these items in the context of protest²⁷. Based on the previously stated, we recommend General Comment 37, in specific paragraph 70, goes back to the wording in the previous revision:

Anonymous participation and the wearing of face masks may present challenges to law enforcement agencies, for example by limiting their ability to identify those who engage in violence, but should not be the subject of a general ban. Concerns about identification may deter people with peaceful intentions from participation in demonstrations, or face masks could be part of the chosen form of expression.

The 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 made clear that the State’s obligation to facilitate includes the responsibility to provide basic services, including traffic management, medical assistance, and **clean-up services**. Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.²⁸

²⁴ IACHR, Report on Protest and Human Rights, 2019, para. Para. 12

²⁵ IACHR, Report on Protest and Human Rights, 2019, para. 83-84.

²⁶ IACHR, 2015 Annual Report, Chapter IVA Use of Force, Para. 68.

²⁷ Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, Communication to the State of Brazil, [OL BRA 3/2019](#), March 2019. “We are also concerned over the provision in the Decree which prohibits the use of masks and other items which conceal the face of protesters, as both scarves and gas masks may fall into this category, items which may be used by demonstrators to protect themselves from the effects of tear gas in cases where it may be used in order to disperse protests.

We further express concerns that the use of such facial coverings may give rise to criminal sanctions against the user. While the purported justification of this restriction is to facilitate identification of demonstrators, we remind your Excellency’s Government that such restrictions must be necessary and proportionate to the aim pursued, and a blanket ban on the use of facial coverings in the context of manifestations may constitute an a priori assumption of criminality. We note that facial coverings do not necessarily prevent identification, as such can be removed in the case of arrest for criminal behaviour.

Moreover, the Rapporteurs note that in the context of public demonstrations is very common to use bandanas, masks, hoods, caps, backpacks and other types of clothing and accessories in public. These elements cannot be considered sufficient signs of threat of use of violence, nor be used as grounds for dispersion, detention or repression of demonstrators. The IACHR has emphasised that, in a democracy, the States must act on the basis of the legality of the protests or public demonstrations and under the assumption that they do not constitute a threat to public order. This implies an approach focused on the strengthening of political participation and the construction of higher levels of citizen participation.”

²⁸ 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 February 2016, para. 40.

This standard could inform Paragraph 74 of the General Comment which approaches the matter of clean-up services.

Finally, in reference to paragraph 17 of the General Comment, the IACHR, when approaching the topic of eviction or arrest warrants for persons in an occupation, has stressed that “crimes against property do not necessarily include an element of violence”.²⁹

7. Use of Force in the context of protest

The use of public force can be an important element in ensuring the right to protest and protecting the safety of demonstrators. On the other hand, it can also give rise to major violations of these same rights.

This aspect is always a complex issue to resolve, especially in contexts of social or political unrest. In its 2015 Annual Report, the Commission recalled, based on a number of reports and on the case law of the Inter-American system, the irreversibility of the consequences that may result from the use of force. As such, the use of force is viewed as “a last resort that, qualitatively and quantitatively limited, is intended to prevent a more serious occurrence than that caused by the State’s reaction. Within that framework, characterized by exceptionality, both the Commission and the I/A Court HR have agreed that for the use of force to be justified one must satisfy the principles of **legality, absolute necessity, and proportionality**.”³⁰

Paragraph 91 of the General Comment could come more in line with these principles.

Furthermore, as the IACHR noted with respect to the police in the United States, “[...] The main concerns related to excessive or arbitrary use of force is focused on militarization of the police in terms of the equipment used, the type of training they receive, the action protocols they use, and the difficulty with which police officers who are guilty of abuse or excessive use of force are held criminally liable and prosecuted.”

Given the imperative social interest in the exercise of the rights involved in the contexts of protest for peaceful demonstrations for the democratic life of a nation, the Commission considers that in this specific sphere those considerations are all the more important for ruling out the participation of military and armed forces in such situations.³¹

In this respect, we suggest that Paragraph 92 of the General Comment be more restrictive on the possibility of using military to police assemblies. In this same paragraph, we recommend to change the term of “policing assemblies” to “the management of assemblies” with the aim to reinforce the idea of State obligations aimed at guaranteeing, protecting, and facilitating public protests; as opposed to policing protests.

a) Forced Dispersal or break-ups

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association Maina Kiai stated that “international law allows for dispersal of a peaceful assembly only in rare cases. For example, a peaceful assembly that incites discrimination, hostility or violence, in contravention of article 20 of the International Covenant on Civil and Political Rights, may warrant dispersal if less intrusive and discriminatory means of managing the situation have failed. Similarly, while mere inconvenience to others, or temporary disruption of vehicular or pedestrian traffic, are to be tolerated, where an assembly prevents access to essential services, such as blocking the emergency entrance to a hospital, or where interference with traffic or the economy is

²⁹ IACHR, Report on Protest and Human Rights, 2019, para. 146.

³⁰ IACHR, 2015 Annual Report, Chapter IVA Use of Force. IACHR, Report on Protest and Human Rights, 2019, para. 102.

³¹ IACHR, Report on Protest and Human Rights, 2019, para. 173.

serious and sustained, for example, where a major highway is blocked for days, dispersal may be justified. Failure to notify authorities of an assembly is not a basis for dispersal.”³²

Although the aforementioned paragraph is the source for paragraph 96 of the General Comment, the extent to which international law protects an assembly from dispersal could be further reflected in the document by citing the source more literally.

b) Use and control of less lethal weapons

The IACHR, in its latest report “Protest and Human Rights” addresses the limitations to the use of force and less lethal weapons: “when the authorities make a lawful and legitimate decision to break up a protest, the order to disperse must be clearly communicated and explained, to allow the demonstrators to understand and comply, giving them sufficient time to disperse without resorting to police force. The IACHR considers that the indiscriminate persecution of demonstrators following the dispersal of a protest exacerbates tension and is not justified by the **criteria of necessity and proportionality** in the use of force.”³³

The Commission notes the frequent indiscriminate impact of the less lethal weapons used in the context of social protests. Such is the case of tear gas and of the devices that shoot repeatedly which, on occasion, are used to shoot rubber projectiles covered with hard rubber, plastic, or soft rubber. The use of such weapons should be considered ill-advised since it is impossible to control the direction of their impact. The Commission considers it important to give impetus to studies to further available medical knowledge about the impacts on health and integrity of each of the existing weapons. Moreover, studies should be undertaken that specify how each type of weapon can be used safely.³⁴

For instance, tear gas should not be used in enclosed spaces or against people who have no way to disperse or evacuate. The use of non-lethal weapons should be preceded by formal warnings, which give people the opportunity to evacuate without causing panic or stampede situations. There should be an obligation to explicitly define who should authorize their use, and guidelines should be drawn up to assign liability for the incorrect use of each type of weapon or device in use.³⁵

The criteria for the use of force, and a stronger wording regarding the use of tear gas and rubbercoated metal bullets should serve to strengthen paragraph 97, 98 and 99 of the General Comment. Paragraph 98 could include reference to the *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* which states “Rubbercoated metal bullets are particularly dangerous projectiles and should not be used.”³⁶

Finally, Paragraph 99 could take into account the most recent events in Latin America where protestors have lost eye sight, limbs, and even their lives, with the use of non-lethal force.³⁷

8. The duty to not criminalize leaders and participants in demonstrations and protests

a) Precautionary measures and the prohibition of arbitrary arrests³⁸

The IACHR underscored in its 2015 Annual Report that the use, in criminal cases, of precautionary measures such as the prohibition of public assembly or demonstration may constitute a strategy to prevent participation in public demonstrations and therefore a misuse of the criminal law. It is very common for

³² 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 February 2016, para. 62

³³ IACHR, Report on Protest and Human Rights, 2019, para 155

³⁴ IACHR, 2015 Annual Report, Chapter IVA Use of Force. IACHR, Report on Protest and Human Rights, 2019

³⁵ IACHR, Report on Protest and Human Rights, 2019, para. 125

³⁶ United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, para. 7.5.8.

³⁷ In the last months of 2019, the IACHR received information of the excessive use of force in the context of protests in at least four countries in the region. In Ecuador, the use of chemical agents and rubber bullets left as a result several injured journalists, among them, stands out for its gravity, the impact of a tear gas grenade in a protestor’s face. In Chile, the indiscriminate use of ballistic and non-ballistic projectiles left a considerable number of people with eye injuries and mutilations.

³⁸ IACHR, Report on Protest and Human Rights, 2019, para 221-231

mass detentions of human rights defenders to take place, especially in contexts of social protest. Many times when carrying out such arbitrary detentions, the persons affected are released within a few hours, but in other cases they remain preventively deprived of their liberty for unreasonable periods of time.

The IACHR recalls that the general requirements of the system for the prevention of arbitrary arrests also apply in protest contexts. First, no one may be deprived of liberty except for reasons expressly defined in the law, or in a manner contrary to the procedures objectively defined therein. In accordance with these principles, no one may be arrested except on the grounds established under domestic law, and subject strictly to all procedural formalities which judicial and police authorities are required by law to follow. In addition, States should ensure that no person is subjected to detention or imprisonment based on reasons and methods which, even if deemed legal, may be considered incompatible with respect for fundamental individual rights because they are, inter alia, unreasonable, unpredictable, or disproportionate.

An arrest based exclusively on the act of participating in a protest or public demonstration does not meet the requirements of reasonableness and proportionality established by international standards. The deprivation of liberty during a demonstration has the immediate effect of preventing the detainee from exercising the right to protest and has a chilling effect on participation in public demonstrations, all of which affects the enjoyment and exercise of the right to social protest.

Therefore, and bearing in mind event which took place in the region³⁹, the Commission considers it vitally important to re-emphasize that arrests made by security forces in connection with social protests must strictly comply with all requirements imposed by domestic laws and international standards. In this respect, we suggest that both paragraph 29 and paragraph 94 of the Comments take into consideration the abovementioned standards.

9. Private Security Providers

In its latest Report on Protest and Human Rights, the IACHR understands how protests directed at private actors, whether an individual, an institution, or a company, may also express grievances or opinions on matters of public interest. This is the case, for example, in many of the public demonstrations condemning the environmental harm or pollution that may result from the activity of large extractive companies, or from the operation of businesses that have impacts on territories.⁴⁰ As noted by the UN Special Rapporteurs Kiai and Heyns, “Business entities commonly seek injunctions and other civil remedies against assembly organizers and participants on the basis, for example, of anti-harassment, trespass or defamation laws, sometimes referred to as strategic lawsuits against public participation. [In that sense,] States have an obligation to ensure due process and to protect people from civil actions that lack merit.”⁴¹

Moreover, in the Americas, participants in protests have often been victims of extrajudicial executions, forced disappearances, torture, ill-treatment, and illegal deprivations of liberty. In some cases it is not only the State, but also private actors acting with the acquiescence of public officials.⁴² On its side, the IACHR recommends States to set legal regulations including the scope of operation of private security companies, proscribing their involvement in citizen security tasks.

³⁹ As reported in the Annual Report of 2014 of the Office of the Special Rapporteur, that year criminal proceedings initiated in the context of demonstrations against protestors and human rights defenders in Brazil. On July 12, one day before the 2014 FIFA World Cup Final, police officers searched the residences of the protestors and confiscated articles (including pamphlets and gas masks) and detained 19 people, including attorney Eloisa Samy who defended the rights of the protestors, and two teenagers. The action was authorized by the 27nd Criminal Court for Rio de Janeiro who issued arrest and search and seizure orders, as well as temporary detention for 26 protestors and human rights defenders as well as the two teenagers. According to the court the detentions were necessary due to “reliable evidence” that these persons were planning acts of violence over the next days, “with a view to take advantage of the visibility due to the coverage of the World Cup. Criminal proceeding were opened against 23 of the 26 aforementioned protestors, including attorney Samy, for the crime of “armed organized crime” [formação de quadrilha] and ordered pretrial detention allegedly for dangerousness and the need to preserve public order. They were released under habeas corpus but protestors were banned from participating in new protests, para. 172.

⁴⁰ IACHR, Report on Protest and Human Rights, 2019, para 13

⁴¹ 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 February 2016, para. 86.

⁴² IACHR, Report on Protest and Human Rights, 2019, para 26

In this sense, the mention of private security providers in paragraph 27 of the Comment represents a guarantee for addressing this challenge.

10. Protest and Access to Information⁴³

Social protest is an essentially public event and constitutes the exercise of the rights to freedom of expression and political participation, among other. This results in broad criteria for access to information and the subsequent obligation of the State to produce information and records. Broad access to information is not only related to accountability and the way in which the State facilitates protest, but is also crucial to helping channel, display, and disseminate the speech and actions of demonstrators.

Recording information and ensuring access to it are fundamental both for guaranteeing the right to protest and for preventing violations of fundamental rights such as life, physical integrity, and freedom, as well as for purposes of accountability. The production of, and access to, information in connection with social protest is an essential component of positioning the exercise of the right to protest and demonstrate as a core activity of political participation and democratic coexistence.

All regulations governing social protest must be accessible and published. These regulations include not only laws, decrees, and ordinances, but also general protocols, procedural manuals, and specific orders on how to conduct operations. The knowledge and disclosure of these protocols and ethical norms reduce the arbitrary margins of decisions and actions of State agents in relation to social protests. The knowledge and dissemination of these rules and orders is essential not only to guide police operations but also to allow monitoring and control by civil society organizations, journalists, and oversight institutions. Similarly, the European Code of Police Ethics recommends that “Legislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public and clear.”⁴⁴ The Venice guidelines point to the same direction: “Many countries already have legislation specifically relating to access to information, open decision-making and good administration, and these laws should be applicable to the regulation of freedom of assembly”.⁴⁵

In this sense, this Office considers of great importance that the General Comment incorporate throughout the text existing standards for transparency. Paragraph 27 for instance, when referring to the *mise en place* of a legal and institutional framework within which the right can be exercised effectively. Similarly, paragraph 87, which refer to the plan for the policing of each assembly.

a) Transparency, accountability, and the role of journalists

The IACHR also notes that the State must guarantee and facilitate the right of all persons “to observe, and by extension monitor, assemblies. (...) The concept of monitoring encapsulates not only the act of observing an assembly, but also the active collection, verification and immediate use of information to address human rights problems.”⁴⁶ Moreover, the UN and the IACHR has interpreted that the right to access information includes the right to record the law enforcement operation. “Everyone— whether a participant, monitor or observer — shall enjoy the right to record an assembly, which includes the right to record the law enforcement operation. This also includes the right to record an interaction in which he or she is being recorded by a State agent — sometimes referred to as the right to “record back”. The State should protect this right. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished”.⁴⁷

⁴³ IACHR, Report on Protest and Human Rights, 2019, chapter VII.

⁴⁴ European Code of Police Ethics. Recommendation Rec(2001)10 of the Committee of Ministers to member states. on the European Code of Police Ethics.

⁴⁵ OSCE/ODIHR - Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2nd ed., 2010, para. 63.

⁴⁶ IACHR, Report on Protest and Human Rights, 2019, para 306

⁴⁷ Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 23 May 2011, A/HRC/17/28, para. 31. It has also been stated that assemblies “play a critical role in protecting and promoting a broad range of human rights.” 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, 2016, para. 71).

In the 2013 Joint declaration on violence against journalists and media workers in the context of protests, the Special Rapporteurs noted that in the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority.⁴⁸

One year before of that joint declaration, in 2012, the Inter-American Court of Human Rights had ruled that the dissemination of information recorded by a journalist in the context of protest “enabled those who saw it to observe and verify whether, during the demonstration, the members of the armed forces were performing their duties correctly, with an appropriate use of force.” The case involved Colombian journalist Velez Restrepo, who captured images of soldiers involved in actions to control the demonstration that was taking place on August 29, 1996 in Caquetá, Colombia, attacking defenseless individuals.⁴⁹

From this, we would like to offer the following suggestions to paragraph 34 of the Comments:

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 free flow of information and political participation**, and they are entitled to protection under **article 21** of the Covenant. **The State must afford them the highest degree of protection for** exercising these functions, also in respect of the 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.

Finally, the Commission has also considered on previous occasions that participation in security operations by plainclothes police or without their respective identification presents problems for the administrative and/or judicial review of possible irregularities and/or violations of rights. The lack of proper identification is an additional obstacle to the assignment of responsibility in contexts where reconstructing the events is complex in itself.⁵⁰ The reconstruction of the facts and the value of audio visual records and testimony as evidence is severely limited if it is not possible to identify the officers directly involved as State agents and with their personal identity. The uniform and identification of security officers in a protest have a preventive function, since officers act with a higher expectation of accountability.⁵¹

In this sense, paragraphs 100 and 103 of the General Comments are in line with the regional standards.

11. Protests and the Internet⁵²

In its recent report "Protest and Human Rights", the Office of the Special Rapporteur addressed the issue of interference with the availability and use of technologies in the context of peaceful protest in the chapter on "Protests and the Internet". On that occasion, this Office noted that:

The Internet is now a fundamental communication tool that enables people to link up and connect in an adaptable, fast, and effective manner, and is considered a tool with unique potential for the exercise of freedom of expression. Among the new powers enabled by the Internet are the ability to associate and

⁴⁸ Joint Declaration of the United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights, “Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests,” 2013.

⁴⁹ Inter-American Court of Human Rights, Vélez Restrepo and family v. Colombia. Preliminary Objection, Merits, Reparations, and Costs. Judgement of September 3, 2012. Series C No. 248.

⁵⁰ This Office received information during its visit to Chile in 2019, of the use of false identifications by police, such as "Super Dick", "Destroyer" and "Raptor". This motivated a request by the Comptroller to the Police, so that the institution answered to the alleged irregularities in the identification in the uniforms of the police. The Police responded that the measure responded to security reasons and to alleged death threats that the officers would have received. IACHR Annual Report 2019. Available March 2020.

⁵¹ IACHR, Report on Protest and Human Rights, 2019, para 238-239

⁵² IACHR, Report on Protest and Human Rights, 2019, chapter VI.

assemble that people have acquired in the digital age, which in turn enhances the full realization and enjoyment of other civil, political, economic, social, and cultural rights. Meetings and associations in the digital age can be organized and held without prior notice, on short notice, and at low cost. The Internet is also now a fundamental tool for monitoring and reporting human rights violations during demonstrations and meetings.

The Internet can be seen and analyzed as a means of organization or as an enabling platform for protests. In practice, it works as a means of disseminating, convening, and publicizing meetings and physical gatherings (using social networks, blogs, or forums, for instance) to be carried out in a tangible public place, expanding the boundaries of participation. The Internet also offers the possibility of organizing an online protest, providing a common meeting space, shortening distances and times, and simplifying formalities and agendas. Both settings must be protected and promoted to the extent that they contribute to the full exercise of human rights.

The international standards developed within the Inter-American system and the universal system on the rights to freedom of expression, association, and peaceful assembly are fully applicable to the Internet.

In recent years there have been various instances of protest on the Internet that include email chains, petitions, demonstrations, and campaigns developed on social networks, etc. In the same way that States must ensure access to public spaces—such as streets, roads, and public squares—for the holding of gatherings, they must also ensure that the internet is available and accessible to all citizens in order to provide a space for the organization of associations and assemblies for purposes of taking part in the political life of the country.

a) Network disruptions, blocking of Internet services

Limitations on access to the Internet before or after peaceful gatherings, including total or partial disconnections, the slowdown of Internet service, and the temporary or permanent blocking of different sites and applications, **constitute unlawful restrictions on the rights of association and assembly**. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of Association has stressed the need to ensure access to the Internet at all times, including during periods of political unrest.⁵³ Similarly, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recommended, inter alia, that “all States [should] ensure that Internet access is maintained at all times, including during times of political unrest”⁵⁴. “**Any determination on what [website] content should be blocked must be undertaken by a competent judicial authority or a body which is independent of any political, commercial, or other unwarranted influences**” (para. 70).

States should permit and encourage the open and free use of the Internet, as well as all other forms of communication, and exceptions to such access must be clearly established in law and satisfy the three-part test established in the inter-American system. The laws regulating so-called “cybercrime” must be clearly and specifically drafted to ensure the principle of legality, have a legitimate purpose, be necessary in a democratic society, and be proportionate; under no circumstances can they be used to prohibit, obstruct, or hinder a peaceful assembly, demonstration, or protest.

Moreover, the 2015 Joint Declaration of Special Rapporteur underlined that “Filtering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures **which can never be justified** under human rights law.”⁵⁵

⁵³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on the Rights to freedom of peaceful assembly and of association, A/HRC/41/41, 2019.

⁵⁴ United Nations, Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc. A/HRC/17/27, 2011, A/HRC/17/27, para. 79.

⁵⁵ Joint Declaration of the United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights, “[Joint Declaration on Freedom of Expression and responses to conflict situations](#),” 2015.

These standards should be incorporated to [paragraph 38](#) of the General Comment to reinforce there is no justification for internet shutdowns.

b) Restrictions on secure and confidential communications

In no case can mere participation in protests, or in their announcement or organization, justify the violation of the right to privacy with respect to private communications made by a person, whether in writing, by voice or images, and regardless of the platform used. The right to privacy encompasses not only individual communications, but also communications that take place in closed groups to which only members have access.

There have been reports in the region of police and military officers infiltrating social networks or using false identities in order to obtain information about social movements and the organization of demonstrations and protests. Such a practice may be considered a serious violation of the rights of assembly and freedom of association, and even of the right to privacy. Under no circumstances are online intelligence actions allowed to monitor people who organize or take part in social protests.⁵⁶

The guarantee of privacy and anonymity are also part of the rights of association and assembly. Without prejudice to the foregoing, it does not cover all types of expressions or associations. On the contrary, “the anonymity of the sender would in no way protect anyone who disseminates child pornography, war propaganda, or hate speech that constitutes incitement to violence or publicly and directly incites genocide.” States should guarantee the full protection of anonymous speech and regulate specific cases and conditions when such anonymity must be lifted. This requires sufficient judicial oversight and the full application of the principle of proportionality with respect to measures aimed at identifying the person in question.

c) The use of surveillance and monitoring tools by the authorities, including biometric-based recognition technology to identify protesters

In its recent report, the Office of the Special Rapporteur pointed that “the Commission believes it is relevant to pay attention to the development of technologies for remotely controlled systems without operators (such as drones). This new field of technological development is likely to be used in the context of social demonstrations or crowd control. As noted by the UN Rapporteur on Extrajudicial Executions: ‘The availability of advanced technology brings with it increased levels of obligation, both with respect to decisions about whether and to what extent force should be used and with respect to accountability and oversight in relation to the exercise of that discretion’⁵⁷.”

Furthermore, as stated in the IACHR report, a particularly serious aspect of the criminalization of protest is the State practice, reported in several countries in the region, of conducting espionage, monitoring, infiltration, and a variety of covert intelligence activities against demonstrators, public figures, leaders, lawyers, human rights defenders, organizations, and their media, and against social or political movements that participate in or organize public demonstrations or are linked in various ways—closely or not—to these events.

While the objective of the State’s intelligence activities is to provide its authorities with input for decision-making in areas such as national defense and crime policy, their orientation towards social leaders and organizations engaged in activities that are fundamental to democratic life seriously affects freedom of expression, as well as the rights to assembly, association, and political participation. These covert activities are usually disproportionate and excessive in relation to the legal interests to be protected or the effects to be

⁵⁶ During the work visit to Nicaragua in 2018, the IACHR received testimony alleging that the government ordered the monitoring of social network profiles in order to find out who participated in the protests or spread messages or information contrary to the government. The IACHR noted with concern that these people might have been the object of reprisals by the authorities. In addition, prior to the crisis that began on April 18, the Office of the Special Rapporteur received information about the government’s intentions to present a bill that would seek to control social networks in cases of “cyber-harassment”

⁵⁷ Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary General, A/69/265, 6 August 2014, para. 67.

prevented, and constitute a discriminatory practice against social movements for criticizing some aspect of public policy.

With these standards in mind, this Office suggests the revision of [paragraph 71 and 72](#) of the General Comment, which might not reflect the exceptional basis of the use of these technologies.

14. State of Emergency and Conflict Situations⁵⁸

Chapter VIII of the 2019 Report on Protest and Human Rights is focused on States of Emergency. In this section, the IACHR considers that public protests and demonstrations, as legitimate and protected forms of the exercise of various rights and a fundamental instrument of democratic coexistence—even when they express social unrest—cannot be used as a justification for declaring states of emergency or for suspending rights in other ways. The Office has received information on cases in the region where state of emergencies are declared in response to protests⁵⁹.

Controlling disturbances that may be produced internally by social protest demonstrations is up to the police, whose function is geared toward public security and not the security of the State. The declaration of states of emergency should not be used to circumvent the domestic proscription against using the armed forces in the context of demonstrations.

Furthermore, the 2015 UN, IACHR; OSCE and ACHPR Joint Declaration⁶⁰ on freedom of expression and responses to conflict situations features the following which could inform [paragraphs 107 to 110](#) of the General Comment:

General principles:

- a. States have a direct responsibility under international human rights law to respect freedom of expression and they are also under a positive obligation to take effective measures to protect freedom of expression against attacks by third parties, including by ensuring accountability for any attacks on those exercising their right to freedom of expression and by raising awareness about the importance of freedom of expression.
- b. States should not respond to crisis situations by adopting additional restrictions on freedom of expression, except as strictly justified by the situation and international human rights law.
- c. Any restriction on freedom of expression must meet the three-part test under international human rights law, namely that it is provided for by law, it serves to protect a legitimate interest recognized under international law and it is necessary to protect that interest.

Administrative Measures:

- c. Filtering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.

Situations Where the Rule of Law is no Longer Effective:

States and private actors are still bound to respect international humanitarian law even where the rule of law has failed, including provisions which call for media workers to be treated as civilians rather than as combatants.

⁵⁸ IACHR, Report on Protest and Human Rights, 2019, chapter VIII.

⁵⁹ On October 5, 2019, for instance, the government of Ecuador issued Executive Decree No. 884 to impose a state of exception for 60 days nationwide, which was applied with respect to the "freedom of association, assembly, and free transit", and was then extended through Executive Decree No. 888, with the establishment of a curfew and the militarization of the capital, Quito. The state of emergency was the response to the protests unleashed by a series of measures announced on 1 October that would have been taken to reduce public spending.

⁶⁰ Joint Declaration of the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information "[Joint Declaration on Freedom of Expression and responses to conflict situations](#)," 2015.

iii. Specific changes suggested

This section, by no means, summarizes Section 2. It includes some precise changes suggested to certain paragraphs which were not addressed in Section 2, and which we deem do not require the exposition of legal standards.

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 indoors, or online.

26. The obligation to respect and ensure peaceful assemblies imposes essentially negative as well as positive duties on States. They have the negative duty of *no unwarranted interference* with participants in peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block or disrupt or dissolve assemblies without compelling justification, and not to sanction participants without legitimate cause.

33. States parties must moreover ensure independent and transparent oversight of all bodies involved in managing peaceful assemblies, including through timely access to judicial remedies in case of alleged or potential violations of the right.

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 rights under the Covenant.

108. If not derogated from, the right of peaceful assembly continues during states of emergency, including online assembly. The possibility of restricting the right of peaceful assembly is generally sufficient in such cases and no derogation from the provisions in question would be justified by the exigencies of the situation.

I would like to thank the United Nations Office of the High Commissioner for Human Rights for the possibility of submitting comments on the matter. I hope that these inputs contribute to the **General Comment No. 37 on Article 21: right of peaceful assembly - Revised draft prepared by the Rapporteur, Mr. Christof Heyns**.

Please be assured of my full willingness to collaborate and accompany initiatives related to the subject.

I take this opportunity to express the testimony of my highest and most distinguished consideration.



Edison Lanza

Special Rapporteur for Freedom of Expression
Inter-American Commission on Human Rights
Organization of American States