Civic Space Brief

Freedom of Peaceful Assembly

WHAT ARE WE TALKING ABOUT?

Human rights protect everyone's right to peacefully assemble[1], express themselves, convey positions, exchange ideas, affirm group solidarity or identity and serve other goals. It means that all people, citizens and non-citizens, have the **right to organize and take part in non-violent gatherings,** regardless of the number of participants and prior approval. Participants are **free to determine the purpose or expressive content of the assembly** (including contentious ideas or goals) and its time, place and manner, which may be restricted only exceptionally. No one may be forced to participate in an assembly or to pledge not to organize or participate in future assemblies. Organizers should not be required either to arrange for or contribute towards the costs of policing or security, medical assistance or cleaning, or other associated public services.

> *The right of peaceful assembly is a valuable tool that can and has been used to recognize and realize a wide range of other rights, including* ***economic, social and cultural rights.*** *It is of particular importance to marginalized individuals and groups.* ***Failure to respect and ensure the right of peaceful assembly*** *is typically a* ***marker of repression.***
>
> General Comment No. 37 (2020) on Article 21, ICCPR

What forms can peaceful assemblies take?

- **Many different forms:** demonstrations, protests, rallies, sit-ins, candlelit vigils, flash mob, collective civil disobedience, direct-action campaigns, spontaneous mobilizations, and counterdemonstrations.
- They can be **stationary** (e.g. pickets, tent encampments), or **mobile** (e.g. processions or marches).
- Participants should be free to **determine which equipment to use to convey their message**, e.g. posters, megaphones, musical instruments or other technical means, including projection equipment.
- **Anonymity should be allowed,** e.g. face coverings, other disguises worn for expressive purposes/to protect privacy.

Where can peaceful assemblies take place?

Anywhere - outdoors, indoors and online, in public spaces, such as streets and squares, and private space, or **a mix of these**, in accordance with the **sight and sound principle**[2]. Assemblies should not be relegated to remote areas where they cannot effectively capture attention.

Private spaces

Considering whether,

- it is routinely publicly accessible;
- property owners approve of the use and how assemblies may interfere with their interests;
- the purpose of the assembly is to contest ownership of that very space, and
- participants have other reasonable means to achieve the purpose of the assembly.

[1] This briefer refers to General Comment No. 37 on Article 21 (Right of peaceful assembly) published by the Human Rights Committee to interpret provisions of the Covenant on Civil and Political Rights.

[2] The "Sight and sound" principle is about a meaningful opportunity that assemblies be seen and heard by target audiences to achieve their goals.

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Only peaceful assemblies are protected – what does "peaceful" mean?

- **That there is no evidence that certain participants have violent intentions and plan to act on them, are likely to cause violence, or have incited others to use violence.**
- Mere **pushing, shoving, blocking traffic, or causing inconvenience does not amount to "violence".** The test is whether participants use **physical force likely to result in injury or death,** or serious damage to property.
- Peaceful assemblies can be **inherently or deliberately disruptive** (e.g. of vehicular or pedestrian movement or economic activity) and require a significant degree of tolerance.
- **Violence** against participants in the assembly **by authorities** or others acting on their behalf, members of the public or counterdemonstrators, **does not render the assembly non-peaceful**. Isolated acts of violence by some participants should not be attributed to the organizers or to the assembly.
- The right remains **protected even when not all domestic legal requirements are fulfilled,** e.g. collective civil disobedience including deliberate law-breaking if non-violent.

Restricting peaceful assemblies must be an exception - what can be restricted?

- Authorities must show that restrictions are **based on law, necessary, and proportionate** to at least one of the permissible grounds[3] and non-discriminatory. Authorities should seek to apply the **least intrusive measures.** Any restriction should aim to facilitate the right, rather than impose unnecessary and disproportionate limitations on it.
- **Blanket restrictions on peaceful assemblies are presumptively disproportionate.** Restrictions must be based on specific assessments of participants' conduct. Restrictions on assemblies in and around places such as courts, parliaments, sites of historical significance or other official buildings must be specifically justified. The number of participants in assemblies may be limited only if there is a clear connection with a legitimate ground for restrictions.
- Assemblies **may not be used for propaganda for war** or **advocacy of national, racial or religious hatred** that constitutes incitement to discrimination, hostility or violence. The display of symbols directly and predominantly associated with incitement to discrimination, hostility or violence may be restricted.

STATES' ROLE:

Protect assemblies & minimize interference

- **RESPECT peaceful assemblies and refrain from unwarranted interference** or prohibiting, restricting, blocking, or dispersing, disrupting or sanctioning participants or organizers unless there are compelling and legitimate reasons, in line with international human rights law.
- **FACILITATE peaceful assemblies and associated activities** outside the immediate context of the gathering[4] for all without discrimination. This also means keeping the Internet on.
- **AVOID the use of force.** Where absolutely necessary, use only minimum force, proportionate to the lawful objective. Less-lethal weapons, such as tear-gas or water cannons, should be used only as a measure of last resort and avoided in confined spaces. The use of firearms must be limited to targeted individuals only where necessary to confront imminent threats of death or serious injury.
- **ENSURE that law enforcement protocols strictly comply with human rights** and **relevant guidance**[5]; and protect participants against abuse by non-State actors.
- **DO NOT interfere with privacy**, like unwarranted surveillance (facial recognition or recording footage of assembly participants) and ensure that Internet service providers and intermediaries do not unduly infringe on participants' privacy.

Address root causes

- **ENGAGE in/facilitate mediation and dialogue** to identify solutions to the issues that are being protested.
- **ADDRESS underlying grievances,** such as structural discrimination rooted in harmful stereotypes and exclusion patterns, and socioeconomic inequalities.
- **STRENGTHEN** channels for public participation, including for women and girls and groups at risk of exclusion, at all levels of decision-making and stages.

Ensure accountability & provide remedies

- **PROTECT those who monitor** assemblies, including journalists, human rights defenders, and election monitors, even if and when an assembly is declared unlawful or dispersed.
- **ESTABLISH independent oversight** of all bodies involved with peaceful assemblies.
- **ENSURE that the legal and decision-making system** for human rights violations is effective and accessible, including those related to gender-specific risks and violations, and **provide effective remedies**.
- **ENSURE that business enterprises live up to their responsibility** to respect the right to peaceful assembly (UN Guiding Principles on Business and Human Rights).
- **TRAIN the officials involved in these decisions at all levels of government and hold them accountable.**

[3] Mobilization of resources by participants/organizers; planning; dissemination of information about upcoming events; preparation for and travel to events; communication between participants leading up to and during the assembly; broadcasting of or from the assembly; and leaving the assembly afterwards.

[4] National security; public order and safety, health or morals and others' rights and freedoms.

[5] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and Practical toolkit for law enforcement officials to promote and protect human rights in the context of peaceful protests.