

**World Movement for Democracy Submission to the Human Rights Committee
General Comment on ICCPR Article 21 (Right to Peaceful Assembly)**

March 11, 2019

The World Movement for Democracy is a global network of civil society activists, scholars, parliamentarians, thought leaders, journalists, and funders who are committed to advancing democracy. On behalf of the network, we applaud the Human Rights Committee for initiating a general comment on Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and thank you for providing an opportunity for civil society to participate in this process by responding to the questions posed by the Committee¹.

We are pleased to submit responses to the questions below, which focus on the right of individuals and associations, including civil society activists and organizations, who plan and participate in assemblies, to seek and receive resources by legal means from domestic and foreign donors to support their statutory activities.

The mandate of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has defined “resources” as: “financial transfers (e.g., donations, grants, contracts, sponsorships, social investments, etc.); loan guarantees and other forms of financial assistance from natural and legal persons; in-kind donations (e.g., contributions of goods, services, software and other forms of intellectual property, real property, etc.); material resources (e.g. office supplies, IT equipment, etc.); human resources (e.g. paid staff, volunteers, etc.); access to international assistance, solidarity; ability to travel and communicate without undue interference and the right to benefit from the protection of the State.”²

Numerous international and regional norms referenced below protect the right of individuals and associations to receive funding to support assemblies and other activities. Yet, increasing restrictions placed by States on the ability of individuals and associations to receive resources have been well documented³ and include:

- outright restrictions on the receipt of funding sometimes justified as anti-money laundering or counter terrorism efforts;
- limitations on how funding can be used sometimes justified in terms of development coordination, aid conditionality, or combating foreign influence in “political activities;”
- vaguely written laws, often regarding registration or taxes, that are intentionally difficult to comply with and often result in the arbitrary prosecution of civil society activists or dissolution of associations;
- burdensome administrative and reporting requirements placed on those receiving resources;
- restrictions placed on entities that provide services to civil society actors such as banks and insurers;

¹ United Nations, Human Right Committee, *Half-Day General Discussion in preparation for a General Comment on Article 21*. Available from <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC37.aspx>

² United Nations, General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, A/HRC/23/39, para. 10. (April 24, 2013). Available from https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf.

³ See World Movement for Democracy, *Right to Receive Funding* website. Available from <https://www.movedemocracy.org/defending-democratic-space/right-to-receive-funding>; International Center for Not-for-Profit Law, *Effective Donor Responses to the Challenge of Closing Civic Space*, April, 2018. Available from <http://www.icnl.org/news/2018/Effective%20donor%20responses%20FINAL%201%20May%202018.pdf>; Center for Strategic and International Studies, *Donor’s Perspectives on Closing Civic Space*, June 2018. Available from <https://www.csis.org/analysis/donors-perspectives-closing-civic-space>; and Carnegie Endowment for International Peace, *The Closing Space Challenge, How are Funder’s Responding?* November 2015. Available from https://carnegieendowment.org/files/Brief-Carothers-CP_258_Closing_Spacee.pdf

- surveillance of civil society actors sometimes conducted through the Financial Action Task Force (FATF) or international financial reporting systems such as the Common Reporting Standards (CRS); and
- harassment by the government or extra-governmental entities that attempt to delegitimize independent civil society actors often by branding them foreign agents.

Given these threats, we are pleased to submit responses to the following questions:

Question 3:

Is freedom of assembly an individual or a collective right, or both? Who is the bearer of the right? The participants – individually or collectively? The organizers? Does the right cover planning/publication/advertisement of the event, and if so when does this start - before notification or other similar requirements have been met?

- Both individuals and associations have the right to plan, organize, promote, and facilitate assemblies and other events.
- The exercise of this right by an individual should not be contingent upon others also exercising this right. Therefore, it is an individual right. Moreover, if an individual participating in an assembly violates a law, which is written and enforced in accordance with international human rights norms, the individual may forfeit his or her individual rights, pursuant to due process. However, the conduct of such an individual must not give a State license to restrict the right of others who lawfully participate in the same assembly or future assemblies.
- However, the term “assembly” implies, at the very least, a gathering of more than one individual who are associated through their participation in the gathering. Therefore, this right must also be considered a collective right.
- This right is universal and inalienable. As such, it is not necessary to assign a beginning and an ending. Some assemblies or counter assemblies may occur spontaneously and may not have a defined organizer or the opportunity to provide prior notification to local authorities. Such assemblies, taking form of workshops, trainings, conferences organized should still be considered to be legitimate and lawful exercises of this right.
- When assemblies are organized in advance, the right to freedom of peaceful assembly should not require the issuance of a permit to hold an assembly.⁴ At most, authorities may require notification for large assemblies or for assemblies where a certain degree of disruption is anticipated.⁵ Organizers should be able to notify the designated primary authority of the holding of a peaceful assembly in the simplest and fastest way, by filling, for instance, a clear and concise form, available in the main language(s) spoken in the country, preferably online to avoid uncertainties and possible delays in postage.⁶ Notification should not turn into a tool in the hands of duty bearers to violate the freedom of peaceful assembly, but rather should help better facilitation, coordination, and provision of safeguard measures.

Question 5:

[W]hat are the (negative and positive) obligations placed by the right of peaceful assembly on the State? How should the right be respected by the State (e.g. through the adoption of laws providing for and regulating its exercise in accordance with international law)? How should it be protected?

- States should enact laws protecting the right to freedom of peaceful assembly that are consistent with

⁴ UN General Assembly, *Rights to freedom of peaceful assembly and association*, A/68/299, p. 10, para. 24 (August 7, 2013). Available from <https://undocs.org/A/68/299>.

⁵ A/HRC/23/39, para. 10.

⁶ *Ibid.*, para. 53.

international law and that are developed with broad input from, and consensus with, civil society. The right to peaceful assembly is interdependent and interrelated to the freedom of expression; as well as access to timely, accurate information. Furthermore, in order for this right to be exercised meaningfully, the law should grant individuals and formal and informal associations the right to seek funding from domestic and foreign sources without fear of harassment or reprisal by governments or extra-governmental actors. It should not place burdensome registration, reporting, or other administrative requirements on assembly organizers who receive funding.⁷ This applies equally to funding used to organize assemblies that are critical of State authorities.

- States have a positive obligation to facilitate peaceful assemblies.⁸ This includes the protection of participants of peaceful assemblies from individuals or groups of individuals, including agents, provocateurs, and counter-demonstrators, who aim at disrupting or dispersing such assemblies. Such individuals include those belonging to the State apparatus or working on its behalf.⁹
- Likewise, positive obligations also entail the state to take effective measures to protect individuals from any hindrance caused by third parties, like the private sector (national or multinational), particularly within the context of assemblies organized by trade and labor unions and environmental activists.
- Given the increasing use of online assembly as a means to exercise peaceful assembly, the state has a positive obligation to protect and ensure safe and easy access to online platforms. Restrictive cybercrime laws should not be a means to restrict freedom of expression, nor assembly. Similarly, the State should facilitate dissemination of information through mass and online communication tools, that would facilitate engagement of groups and their exercise of the right, learning about the upcoming assemblies. Proper management of assemblies by the State requires the protection and enjoyment of a broad range of rights by all the parties involved.¹⁰ Those who take part in assemblies have a number of protected rights, including the rights to: freedom of peaceful assembly, expression, association, and belief.¹¹
- The State should also ensure effective human rights training to law enforcement officials that join in public assemblies. They should be equipped to avoid escalation of violence; and any violations (i.e. excessive use of force against the assemblers...) should be investigated impartially and independently in order to eliminate impunity.
- Article 13 of the Declaration on Human Rights Defenders states: “everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.” Protection of the right of individuals and associations to receive resources is essential for insuring the unimpeded exercise of the freedom of peaceful assembly.

Question 6:

When and how may the right of peaceful assembly be limited? [] How should the procedural requirement for limitations on the right in sentence two of article 21 (that limitations can only be imposed ‘by law’) and the

⁷ UN Human Rights Council, Resolution “Protecting human rights defenders”, doc. A/HRC/22/L.13. (March 15, 2013). Available from <https://documents-dds-ny.un.org/doc/RESOLUTION/LTD/G13/120/26/PDF/G1312026.pdf?OpenElement>.

⁸ UN Human Rights Council; *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, A/HRC/20/27, p. 10, para 27 (May 21, 2012). Available from https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

⁹ *Ibid.*, para. 33.

¹⁰ UN General Assembly, *Joint report of the Special Rapporteur on the rights to the 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, p.4, para. 8 (February 4, 2016). Available from <https://undocs.org/A/HRC/31/66>.

¹¹ Practical Recommendations for the Management of Assemblies. Available from <http://freeassembly.net/reports/managing-assemblies/>.

substantive requirements (this can be done only where it is necessary to protect national security, etc.) be understood? What is their relationship to other articles of the Covenant, including article 22?

- The rights of peaceful assembly may be limited under very specific and limited circumstances. Art. 22, para 2 of ICCPR states that such limitations must be “prescribed by law and ... 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.” These conditions are cumulative, meaning that restrictions must be (1) motivated by one of the above limited interests, (2) have a legal basis and (3) conform to the strict tests of necessity and proportionality.¹²
- “National security” should not turn into a means to impose arbitrary restrictions. Restrictions in conformity with law should be well explained, eliminating any manipulation. Similarly, restrictions should not be discriminatory, directed to marginalized and vulnerable groups only (refugees, disabled people, women, migrant workers, etc.)
- Article 11 of the European Convention on Human Rights (ECHR) states that: “No restrictions shall be placed on the exercise of these [assembly and association] rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”¹³

Question 7:

Can the organisers be required to cover police costs, provide assurances in advance as far as reparations for damages are concerned, cleaning up services, medical services, etc.?

- Organizers should not incur any financial charges for the provision of public services during an assembly such as policing, medical services and other health and safety measures.¹⁴ These services are part of the State’s obligations to facilitate and safeguard assemblies. Such requirements on organizers will limit those without sufficient resources to exercise this right fully. Nor should they be held responsible or liable for the unlawful conduct of others, or be held responsible for the maintenance of public order.
- However, if a State requires organizers to share some burden of these costs, it is more reason why individuals and associations organizing assemblies should be able to seek and receive resources without restriction.

Question 17:

What is the relationship between article 21 and ...; association (article 22)

- While assemblies may occur spontaneously without any prior planning or coordination, as noted above, the vast majority of assemblies take place as the result of some degree of planning on the part of formal and informal associations. Therefore, the right to freedom of association, and the protection of functions and activities that allow associations to sustain themselves, is essential for guaranteeing the unimpeded exercise of right and of peaceful assembly.
- Human Rights Committee has stated, “the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory

¹² A/ HRC/23/39, para 19 and UN Human Rights Committee Comment, *International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.13*, para 6 (May 26, 2004). Available from <https://undocs.org/CCPR/C/21/Rev.1/Add.13>.

¹³ Council of Europe, *European Convention on Human Rights*, (September 3, 1953). Available from https://www.echr.coe.int/Documents/Convention_ENG.pdf.

¹⁴ A/HRC/20/27, p 9, para 31.

activities.”¹⁵ An important element of the activities of associations, across geographic regions, cultures, and history, is to organize and facilitate a broad variety of meetings, assemblies, and other activities involving multiple individuals.

- Human Rights Council has called upon States to ensure that they do not hinder the work of associations and “underlines the importance of the ability to solicit, receive and utilize resources for their work.”¹⁶ Because civil society plays an important role in organizing assemblies, hindering the ability of associations to receive resources severely limits the ability of society, as a whole, to exercise the right to assembly peacefully.
- Moreover, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief explicitly refers to the freedom to access funding, stating that the right to freedom of thought, conscience, religion or belief shall include, inter alia, the freedom “to solicit and receive voluntary financial and other contributions from individuals and institutions.”¹⁷
- Moreover, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai has stated: “[t]he ability to seek, secure and use resources is essential to the existence and effective operations of any association, no matter how small. The right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources.”¹⁸
- The right of individuals and associations to receive resources has been affirmed by a number of international and regional bodies:
 - In 2002, the UN Human Rights Committee expressed concern over funding restrictions in Egypt stating: “[t]he State Party should review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments, which are inconsistent with the provisions of article 22 of the Covenant, such as prior authorization, funding controls, and administrative dissolution.”¹⁹
 - In 2007, the Committee of Ministers of the Council of Europe adopted a resolution requiring States to allow associations to engage freely in “any lawful economic, business or commercial activities in order to support their non-for-profit activities without any special authorization being required”. The Committee explicitly affirmed that associations should be free to solicit and receive funding “not only from public bodies in their own State but also from institutional or individual donors, another State or multilateral agencies.”²⁰
 - In 2008, the Council of Europe published recommendations on the legal status of non-governmental organizations in Europe that states: “NGO’s should be free to solicit and receive funding – Cash or in-kind donations – not only from public bodies in their own State but also from institutional or individual donors, another State or multilateral agencies, subject only to

¹⁵ UN Human Rights Committee, Viktor Korneenko et al. v. Belarus, CCPR/C/88/D/1274/2004 (November 10, 2006). Available from <http://hrlibrary.umn.edu/undocs/1274-2004.html>.

¹⁶ A/HRC/RES/27/31.

¹⁷ UN General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, A/RES/36/55 (November 25, 1981). Available from [Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#).

¹⁸ A/HRC/23/39 Article 6. para 8.

¹⁹ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Egypt*, CCPR/CO/76/EGY, para. 21 (November 28, 2002). Available from <https://undocs.org/en/CCPR/CO/76/EGY>.

²⁰ Council of Europe, *Recommendation CM/Rec (2007) 14 of the Committee of Ministers to Member States on the Legal Status of Non-Governmental Organisations in Europe*, para 14 (10 October 2007). Available from <https://www.osce.org/odihr/33742?download=true>.

- the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.”²¹
- In 2009, Inter-American Commission of Human Rights (IACHR) stated that: “[t]he right to receive international funds in the context of international cooperation for the defense and promotion of human rights is protected by freedom of association, and the State is obligated to respect this right without any restrictions that go beyond those allowed by the right of freedom of association.”²²
 - In 2011, IACHR stated that: “one of the State’s duties stemming from freedom of association is to refrain from restricting the means of financing of human rights organizations.”²³
 - In 2011, regarding Ethiopia, the UN Human Rights Committee concluded that: “[t]he State party should revise its legislation to ensure that any limitations on the right to freedom of association and assembly are in strict compliance with articles 21 and 22 of the Covenant, and in particular it should reconsider the funding restrictions on local NGOs in the light of the Covenant and it should authorize all NGOs to work in the field of human rights. The State party should not discriminate against NGOs that have some members who reside outside of its borders.”²⁴
 - In 2012, the African Commission adopted resolutions on Egypt and Ethiopia condemning restrictions placed on human rights organizations denying them access to essential funding.²⁵
 - In March 2013, the Human Rights Council called upon States to “ensure that reporting requirements for civil society do not inhibit functional autonomy of association and do not discriminatorily impose restrictions on potential sources of funding.”²⁶
 - In 2015, the Council of Europe issued guidelines on freedom of association that states: “[a]ssociations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities. In particular, States shall not restrict or block the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources. This freedom shall be subject only to the requirements in laws that are generally applicable to customs, foreign exchange, the prevention of money laundering and terrorism, as well as those concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.”²⁷
 - In 2018, the African Commission on Human and Peoples Rights issued guidelines on freedom of association and assembly in Africa, which indicate that laws should “clearly state that

²¹Council of Europe, *Legal Status of Non-Governmental Organisations in Europe Recommendation CM/RC(2007)14 and Explanatory Memorandum*, para 50 (December 2008). Available from <https://rm.coe.int/16807096b7>.

²² Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II., Doc. 54 para. 585, (December 30, 2009). Available from <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>.

²³ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, para 179 (December 31, 2011). Available from <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

²⁴ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Ethiopia*, CCPR/C/ETH/CO, para. 25 (August 19, 2011). Available from <https://undocs.org/CCPR/C/ETH/CO/1>.

²⁵ African Commission on Human and Peoples’ Rights, *Resolution on Human Rights Abuses in Egypt*, Doc. 287 (July 29, 2014). Available from <http://www.achpr.org/sessions/16th-eo/resolutions/287/>. See also *Resolution on the Human Rights Situation in the Democratic Republic of Ethiopia*, Doc. 218 (May 2, 2012). Available from <http://www.achpr.org/sessions/51st/resolutions/218/>.

²⁶ A/HRC/22/L.13.

²⁷ Organization for Security and Co-operation in Europe, *Joint Guidelines on Freedom of Association* (January 1, 2015). Available from <https://www.osce.org/odihr/132371>.

associations have the right to seek, receive and use funds freely in compliance with not-for-profit aims.” The guidelines go on to clarify that associations should be able to conduct fundraising; resources are not limited to “cash;” resources can come from international or transnational organizations; and associations should not be unduly subject to the same financial regulations as for-profit entities.²⁸

We strongly urge the Human Rights Committee to underline the importance of independent associations to the exercise of the right of peaceful assembly in its general comment to Article 21 of the ICCPR. We urge the Committee to reaffirm its assertion that “the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities,” which is made possible through the acquisition of resources. Moreover, we urge the Committee to reiterate its position regarding that States should enact legislation that “ensure that any limitations on the right to freedom of association and assembly are in strict compliance with articles 21 and 22 of the Covenant.” This should include language expressly protecting the right of individuals and associations who plan and participate in assemblies to seek and receive resources by legal means from domestic and foreign donors to support their statutory activities.

Thank you again for affording civil society the opportunity to participate in this process.

Signed:

Acción Solidaria, Venezuela	Fundación Pachamama, Ecuador
ActionAid International, South Africa	HAKI Africa, Kenya
Andrew Khoo, Malaysia	Ichal Supriadi, Indonesia
Arab NGO Network for Development, Lebanon	Khalid Hussein, Kenya
Asian Democracy Network, South Korea	Maina Kiai, Kenya
Assembly of pro-democratic NGOs, Belarus	NewSETA, Cameroon
Brot für die Welt, Germany	Network for Chinese Human Rights Defenders, China
Center for Civil Liberties, Ukraine Center for Development and Democracy, Georgia	NIDA Civic Movement, Azerbaijan
Civic Space Institute, United States	Secretariat of the World Movement for Democracy, United States
CIVILIS Human Rights, Venezuela	Terra Mater, Ecuador
Debebe Hailegebriel Law Office, Ethiopia	Ukrainian Center for Independent Political Research, Ukraine
Free Sight Association, Tunisia	Uttam Uprety, Nepal
Fundación Ciudadanía y Desarrollo, Ecuador	

²⁸ African Commission on Human & Peoples’ Rights, *Guidelines on Freedom of Association as Pertaining to Civil Society & Guidelines on Peaceful Assembly*, section V. Available from https://www.movedemocracy.org/wp-content/uploads/2018/06/guidelines_on_freedom_of_association_and_assembly_in_africa.pdf.