LES TRAVAUX DE RECHERCHE DU C.R.D.H.

Observations on the Human Rights Committee's Draft General Comment n°37 on Article 21: Right of Peaceful Assembly

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Résumé : The Human Rights Committee finalized a revised draft of General Comment n°37 (hereinafter "General Comment") on the right of peaceful assembly (article 21 of the ICCPR), suggesting an overview of the scope, the nature, the restrictions and the limits of it. In view of recent developments and events in the world, this document is therefore crucial for States and civil societies around the world. The present contribution aims at providing comments, perspectives and relevant information that could be taken into consideration to bring some further improvements to the draft.

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1. The Human Rights Committee finalized a revised draft of General Comment n°37 (hereinafter "General Comment") on the right of peaceful assembly (article 21 of the ICCPR), suggesting an overview of the scope, the nature, the restrictions and the limits of it.
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I. General remarks

3. In general, the General Comment does a great job at clearly and concisely defining many of the discussed concepts. However, some other notions are less precisely defined. This section points out three areas of improvement, to bring some more clarity and avoid redundancy in the text.

A needed clarification concerning the beneficiaries of the right of peaceful assembly

4. The Human Rights Committee should make a clearer distinction between the individuals – beneficiaries of the right of peaceful assembly – and the assembly as a whole. The right of peaceful assembly not only protects the right of the assembly to protest, but also (and most importantly) the rights of individuals to protest collectively. This distinction is however not easily perceivable in the General Comment, which leaves room for some ambiguity.
5. For instance, paragraphs 10 and 19 seem hard to reconcile. While the first implies that an individual loses his/her right of peaceful assembly if the assembly becomes violent, paragraph 19 suggests that "isolated acts of violence by some participants should not be attributed to other participants. Some participants or parts of an assembly may thus be covered by article 21, while others in the same assembly are not."
6. It would be preferable to delete paragraph 10, and paragraph 19 might perhaps be more specific.
7. In paragraph 19, the words in square-brackets "widespread and serious violence", "sometimes referred to as a riot", should remain in the text so as to better characterize a "violent" assembly. It implies that it is only in such extreme cases, that an assembly becomes entirely violent and deprives all the participants of their individual right to peaceful assembly. In all other situations, there should only be an individualized assessment.
8. It is worth noting however, that such a threshold of violence is not mentioned in other guidelines and reports. Some[1] consider that "no gathering should be considered unprotected"[2] and only individualized acts of violence can be singled out. In other words, the scenario of an entirely non-peaceful assembly does not seem to be contemplated. In other reports[3], this scenario is taken into consideration

[1] Office of the Special Rapporteur for Freedom of Expression of the Inter-America Commission on Human Rights, *Protest and Human Rights Standards on the rights involved in social protest and the obligations to guide the response of the State*, September 2019, para. 83-84: http://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf; 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. 9; Statement by Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, at the conclusion of his visit to the Republic of Chile, 30 September 2015; Amnesty International, *Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, p. 148 c)

[2] Office of the Special Rapporteur for Freedom Expression of the Inter-American Commission on Human Rights, *Report on Protest and Human Rights*, 2019, para. 83-84

[3] OSCE Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly*, 2010, para. 25; ECtHR, *Guide on Article 11 of the European Convention on Human Rights*, 2019, para. 23 and 26: https://is.gd/aka18P; *Report of the UN High Commissioner for Human Rights on 'effective*

if the violent intentions of the organizers and participants are flagrant, an idea which seems to be encapsulated in the first sentence of paragraph 21.

9. An alternative to the "threshold" approach would be for the Human Rights Committee to consider that a whole assembly can never be entirely declared "violent", with the sole exceptions where it is established that the organizers and participants have violent intentions and plan to act upon them.

A necessary harmonisation of the terminology: on the notions of "accessibility" and "public space"

10. While the Human Rights Committee mainly refers to spaces or properties that are "publicly accessible", it also mentions "use of the public space" (§2), places "to which the public has access or should have access" (§64) or "private property that is open to the public" (§67). These variations may potentially lead to different interpretations as to the right to hold assemblies in private properties.
11. Assuming that the intention of the General Comment is to protect, as much as possible, the right to peaceful assembly, it would be preferable to use a single concept and give a clear definition.

* "Open to the public": may imply that assemblies taking place in spaces or properties to which access has been prohibited or not explicitly allowed by the (private or public) owners, could be considered as illegal.
* "To which the public should have access": the use of the term "should" introduces an almost "moral" and at least very subjective criterion. It could prove difficult to agree on the places where the public "should" have access.
* "To which the public has access": it leaves some ambiguity as to whether it is a question of fact (i.e. the public has the ability to have access to a particular place); or a question of law (i.e. the public has been granted the right to have access to a particular place).
* "Publicly accessible": it leaves the same ambiguity as the previous wording.

12. ***Recommendation:*** It is worth noting that some reports and guidelines refer to the "use of public space"[4], or to peaceful assemblies "in a given space"[5], "in private or in public"[6]. These options exclude the concept of "accessibility". We encourage the Human Rights Committee to use a similar expression since it can be more favourable to the individuals, because it makes the availability of, or the rightfulness to use, a certain space an unconditional issue.

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measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests,' UN Doc A/HRC/22/28 of 21 January 2013, para. 10

[4] OSCE Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly*, 2010, para. 3.2; Office of the Special Rapporteur for Freedom Expression of the Inter-American Commission on Human Rights, *Report on Protest and Human Rights*, 2019, para. 72

[5] *Ibid*, para. 19

[6] African Commission on Human and People's Rights, *Guidelines on Freedom of Association and Assembly in Africa*, 22 May 2017, para. 3: https://www.ishr.ch/sites/default/files/documents/guidelines_on_foaa-_english.pdf; 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.10

Redundancy

13. In the interest of brevity and conciseness, some adjustments are suggested to render the General Comment more fluent:

* As mentioned earlier, paragraph 10 could be deleted;
* Paragraphs 17 and 19 both tackle the definition of "violence" and could therefore be merged;
* Paragraph 43 is more or less a restatement of paragraph 40, and could thus be omitted;
* Paragraph 113 is a recap of issues (the rights and freedoms of others) handled earlier in the General Comment and could be omitted; and
* Paragraph 144 does not add any new information or opinions and could also be omitted.

II. Relationship between article 20 and article 21 of the Covenant

14. Since the right of peaceful assembly implies an expressive element, it is clear that such right can only be fully protected when the other rights related to political freedom – "notably freedom of expression" – are also protected (see paragraph 9 of the General Comment). For that reason, the Human Rights Committee proposes that, when dealing with the expressive element of the assembly, "the rules applicable to freedom of expression should be followed" (see paragraph 56).
15. Among these rules is the one that requires the expressive content of the assembly to be freely determined by the participants. It is only under "strictly limited circumstances" that restrictions on peaceful assembly may be based on the content of the message conveyed by the participants (see paragraph 56): where the message consists in propaganda for war (ICCPR, article 20(1)), or where the speech is an "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (ICCPR, article 20(2)).
16. If the rule contained in article 20 of the Covenant enjoys a consensus among the Human Rights Committee experts, there is however no agreement as to whether an assembly that would fall within the previsions of article 20 would be (i) excluded from the protection of article 21; or (ii) be subjected to limitations under article 21.
17. The first option would mean that, because of the message it conveys, an assembly falls outside the scope of protection of article 21: the assembly – and those participating to it – do not enjoy any protection at all under the Covenant. However, if article 20 is contemplated as a restriction to the right of peaceful assembly, then it means that the assembly remains under the scope of protection of article 21, but, because of the message it conveys, may be restricted – in which case the proportionality test applies and the right of peaceful assembly would be more or less restricted on a case-by-case basis.

Article 20 as an exclusion of the assembly from the protection of article 21

18. As "option 1", the Human Rights Committee suggests at paragraph 22 that "participation in assemblies where the expressive purpose is covered by article 20 does not fall within the scope of, and is not protected by, article 21".
19. This is the position that is generally adopted by the different regional systems of protection of human rights. As far as the American system is concerned, the Special

rapporteur on freedom of expression of the Inter-American Commission on Human Rights (IACHR) has specified that certain types of speech "do not enjoy protection under Article 13 of the American Convention 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[7]". Likewise, in the context of the African Commission on Human and People's Rights, messages conveyed in assemblies are protected by freedom of expression, but "hate speech and the incitement of violence are not protected[8]".

20. In the European system, the European Court of Human Rights (ECtHR) has addressed the issue of hate speech not specifically in the context of article 11 of the European Convention (freedom of assembly and association) but rather in the context of article 10 (freedom of expression). For instance, the ECtHR has declared a claim to be inadmissible, on the basis of article 17 of the European Convention, as the applicant had attempted to "deflect Article 10 from its real purpose by seeking to use his right to freedom of expression for ends which […] would contribute to the destruction of the rights and freedoms guaranteed by the Convention[9]". In this case, the ECtHR concluded that the "marked negationist and anti-Semitic character[10]" of the impugned speech made it fall outside the scope of protection afforded by article 10 of the Convention[11]. A parallel can be drawn between article 5(1) of the Covenant and article 17 of the European Convention: therefore, by analogy with the ECtHR's reasoning, where an assembly falling within the scope of article 20 is at stake, the Human Rights Committee could declare that such assembly is aimed at the destruction of the rights recognised in the Covenant, thus excluding such assembly from the scope of protection afforded by article 21.
21. If the Human Rights Committee chooses to contemplate article 20 as excluding the assembly from the scope of article 21, it would align its position with that of the regional systems of protection of human rights.
22. Nevertheless, excluding some specific types of speech from the scope of protection guaranteed by article 21 may pose a risk. First, some States might declare some sorts of speech prohibited under article 20 so as to forbid blasphemy[12] or expressions of political discontent or opposition[13]. Another risk is the selectivity that may be

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[7] Office of the Special Rapporteur for Freedom of Expression of the Inter-America Commission on Human Rights, *Protest and Human Rights Standards on the rights involved in social protest and the obligations to guide the response of the State*, September 2019, para. 66: http://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf

[8] African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, 22 May 2017, para. 78: https://www.ishr.ch/sites/default/files/documents/guidelines_on_foaa-_english.pdf

[9] ECtHR, *M'Bala M'Bala v. France*, 20 Oct. 2015, N°25239/13, para. 41: http://hudoc.echr.coe.int/fre?i=001-160358

[10] *Ibid*

[11] *Ibid*, para. 42. See also on the justification of a pro-Nazi policy, ECtHR, *Lehideux and Isorni v. France*, 23 Sept. 1998, N°24662/94, para. 53: http://hudoc.echr.coe.int/fre?i=001-58245; on a statement that "niggers" and "foreign workers" were "animals", ECtHR, *Jersild v. Denmark*, 23 Sept. 1994, N°15890/89, para. 35: http://hudoc.echr.coe.int/fre?i=001-57891

[12] Rabat Plan of Action (2012), A/HRC/22/17/Add.4, annex, para. 19: "At the national level, blasphemy laws are counterproductive, since they may result in de facto censure of all inter-religious or belief and intra-religious or belief dialogue, debate and criticism, most of which could be constructive, healthy and needed. In addition, many blasphemy laws afford different levels of protection to different religions and have often proved to be applied in a discriminatory manner."

[13] "The Government should not have the power to ban a demonstration because they consider that the demonstrators' "message" is wrong. […] Content-based restrictions on the freedom of assembly

associated with the prohibition of certain types of speech: for instance, the ECtHR has applied article 17 of the Convention to exclude a Shoah-related negationist speech from the scope of freedom of expression[14]; however, the ECtHR has refused to apply article 17 to exclude a speech minimising the allegations on the Armenian genocide in the *Perinçek* case[15].

Article 20 as a restriction to the right of peaceful assembly

23. As "option 2", the Human Rights Committee suggests at paragraph 22 that "the need to act against incitement of discrimination or hostility (…) be dealt with in the section on restrictions that require justification".
24. This is the position adopted by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association[16].This position would also be in conformity with the Human Rights Committee's approach to restrictions to freedom of expression[17]. In its General Comment n°34 on freedom of expression, the Human Rights Committee has indeed specified that "articles 19 and 20 are compatible with and complement each other. The acts that are addressed in article 20 are all subject to restriction pursuant to article 19, paragraph 3[18]".
25. As a consequence, because article 20 would operate as a restriction to the right of peaceful assembly, the proportionality test would apply. The Human Rights Committee has stressed that a prohibition justified on the basis of article 20 must "be "provided by law"; [it] may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of article 19 (3), and [it] must conform to the strict tests of necessity and proportionality[19]".
26. The Committee on the Elimination of Racial Discrimination (CERD) also contemplates advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence as a restriction to freedom of speech[20]. Moreover, the CERD gives an interestingly comprehensive development of the elements that should be considered to define restrictions on freedom of expression. The CERD identifies six factors to be taken into account[21]:

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should be subjected to the most serious scrutiny", ECtHR, *Guide on Article 11 of the European Convention of Human Rights*, 2019, para. 67: https://is.gd/aka18P

[14] ECtHR, *M'Bala M'Bala v. France*, 20 Oct. 2015, N°25239/13, paras. 41 and 42: http://hudoc.echr.coe.int/fre?i=001-160358

[15] ECtHR, *Perinçek v. Switzerland*, 15 Oct. 2015, N°27510/08, paras. 115 and 282: http://hudoc.echr.coe.int/eng?i=001-158216

[16] Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 Feb. 2016, para. 33: "Restrictions on the content of assemblies may be imposed only in conformity with the legitimate limitations on rights outlined above, for example, where the message advocates national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".

[17] The Human Rights Committee makes that parallel between freedom of expression and right of peaceful assembly when it specifies, in footnote 62 of its Draft General Comment n°37, that "any restrictions pursuant to article 20(2) should be justified in terms of the requirements posed for restriction by article 19 or 21".

[18] CCPR, General Comment n°34, *Freedom of opinion and expression*, CCPR/C/GC/34, 2011, para. 50. See also CCPR, communication n°2124/2011, *Rabbae v. The Netherlands*, views adopted on 14 July 2016, para. 10.4

[19] CCPR, communication n°2124/2011, *Rabbae v. The Netherlands*, views adopted on 14 July 2016, para. 10.4

[20] CERD, General Recommendation n°35, *Combatting racists hate speech*, CERD/C/GC/35, 2013, paras. 26 and 45

[21] *Ibid*, para. 15. See also Rabat Plan of Action (2012), A/HRC/22/17/Add.4, annex, para. 29

(i) Content and form of speech (e.g. style, whether it is direct and/or provocative);
(ii) Context of speech (e.g. genocide does not have the same meaning depending on locality);
(iii) Status of the speaker (e.g. whether they are politicians or other public opinion-formers);
(iv) Reach of speech (i.e. nature of the audience and means of transmission, e.g. dissemination on social media);
(v) Purpose of speech (e.g. speech protecting or defending the human rights of individuals and groups should not be subject to criminal sanctions);
(vi) Incitement (i.e. the action advocated through incitement speech does not have to be acted upon, but there is a reasonable probability that the speech would succeed in inciting actual action against the target group).

27. Therefore, if the Human Rights Committee chooses to contemplate article 20 as a restriction to freedom of peaceful assembly, it would

* Fit in coherently with its own approach (as well as that of the CERD) to restrictions to freedom of expression;
* Allow the application of a strict proportionality test so that the right of peaceful assembly is more or less restricted on a case-by-case basis to the extent that it is necessary; and
* Avoid the risk of selectivity of an exclusion of the speech from the scope of protection afforded by article 21.

28. ***Recommendation:*** Considering the foregoing, we recommend the Human Rights Committee, in revising its Draft General Comment on the right of peaceful assembly, to opt for "option 2", i.e. article 20 as a restriction to the right of peaceful assembly.

III. Status of journalists and observers

29. Paragraph 34 is of particular importance since it gives some clarifications about the protection of journalists and human rights defenders while reporting or monitoring on assemblies. It should be linked with paragraph 85 which adds the obligation for law enforcement agencies to "tak[e] reasonable measures to protect other members of the public, including journalists, monitors and observers […] from harm". By including journalists and observers in "other members of the public", the General Comment distinguishes them from the participants of the assembly. The Venice Commission describes them as "third party"[22], "non-participants"[23] and specifies that "[s]tate authorities and law enforcement personnel should be aware of the work of these different actors and of the need to facilitate such work as part of the wider process of protecting the right to peaceful assembly".[24]
30. Since monitoring and reporting a public assembly is an essential element of the right to receive and impart information and forms a crucial part of the right to freedom of peaceful assembly, the General Comment could gain relevance by suggesting the

[22] OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, 2019, para. 34 https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e
[23] *Ibid*, para. 204
[24] *Ibid*, para. 34

creation of a particular protective status in domestic law. The example of threats to the security and wellbeing of journalists during recent demonstrations in France make a good case for adopting such a status. Some journalists, identified as such, have been victim of violence by police units during assemblies, have seen their protective equipment confiscated and have been threatened to be placed under custody.[25] The French national human rights institution (NHRI) (*Commission nationale consultative des droits de l'Homme*) has expressed concerns regarding "the chilling effect of police violence on the exercise of the right of peaceful assembly" and "impediments to freedom to inform and the right to testify".[26]

31. ***Recommendation:*** Considering the above, we encourage the Human Rights Committee to suggest the creation in domestic law of a protective status which could namely:

* Distinguish monitors and journalists from participants[27] ;
* Ensure their right to carry a protective equipment;
* Protect them against the potential targeting by officials or police units;
* Avoid the chilling effect on the exercise of their important function.

IV. Notifications: update of the situation in France

Recent developments on the Law n°2019-290 "aiming at strengthening and ensuring the maintaining of public order during demonstrations" of 10 April 2019[28]

32. The draft bill "aiming at strengthening and ensuring the maintaining of public order during demonstrations" was proposed in reaction to a series of incidents which occurred during demonstrations in May 2018.
33. Under article 3 of the draft bill, the prefect was given the power to prohibit a person from demonstrating on the public domain where it could be established that he/she posed a threat to public order due to violent acts committed during previous demonstrations. However, before it was enacted by Parliament, the draft bill was referred to the Constitutional Council. As a result of its control of the constitutionality of the bill, the Constitutional Council declared article 3 of the bill contrary to the Constitution: "The contested provisions leave the administrative authority an excessive discretion in assessing the grounds on which the ban may be justified". [29] François Fourment welcomed this decision of the Constitutional Council arguing that it had "saved the judiciary" from a "confusion between the

[25] See the alert on the Council of Europe's platform: https://is.gd/23y8RQ
[26] CNCDH, *Déclaration sur les violences policières illégitimes*, 28 janvier 2020: https://is.gd/hvnHCQ
[27] For example, dispersal orders directed at assembly participants would not oblige journalists and monitors to leave the area.
[28] Loi n° 2019-290 du 10 avril 2019 visant à renforcer et garantir le maintien de l'ordre public lors des manifestations: https://www.legifrance.gouv.fr/eli/loi/2019/4/10/INTX1830129L/jo/texte
[29] Constitutional Council, decision n°2019-780 DC of 4 April 2019, para. 23: https://is.gd/WIky3K; According to Olivier Le Bot, article 3 of the bill left the administrative authority a power to "annihilate purely and solely" the right of peaceful assembly, *in* LE BOT Olivier, "*Loi anti-casseurs : censure des interdictions administratives de manifester*", *Constitutions*, avril-juin 2019, n° 2019-2, p. 241-245:

penalty imposed by criminal courts and security measures imposed by administrative police (prohibition to demonstrate)". [30]

34. Concerning the declaration procedure, the new law does not prohibit unregistered assemblies, but provides for penalties for possible organizers who do not comply with the procedure. The State requires citizens to declare public demonstrations in advance. Pursuant to article L. 211-2 of the Internal Security Code, the declaration shall be made to the town hall of the commune or to the town halls of the various communes on which territory the demonstration is to take place, "not less than three days and not more than fifteen days before the date of the demonstration". [31] The declaration shall also indicate the purpose of the event, the place, date and time of the assembly of the groups invited to take part in it and, where appropriate, the proposed itinerary. [32] The authority receiving the declaration shall immediately issue a receipt for it[33].
35. In relation to stop and search, the new article 78-2-4[34] of the Code of Criminal Procedure provides for the visual inspection and searches of persons' luggage that are allowed, in a specific place and for a limited period of time, on the written requisition of the public prosecutor. [35] The French *Ombudsperson "Défenseur des droits"* questioned these search and screening measures, arguing that they would violate individual freedoms, and would cause tensions during demonstrations and contribute to the deterioration of police-population relations. [36]
36. Finally, new article 431-9-1 of the Criminal Code provides for "one year of imprisonment and a fine of 15,000 euros for those who deliberately conceals their face or part of it" without legitimate reason in the surroundings area of a demonstration. [37] The Constitutional Council found that there was no violation of the "no punishment without law principle" (*nulla poena sine lege*) since the legislator requires the "deliberate concealment of part of one's face", as an element of the criminal offense.[38]

37. ***Recommendation***: Considering the above, we welcome the Human Rights' Committee's comprehensive and exhaustive developments on "Notification and Authorization Regimes". Indeed, these developments are of particular importance for States – like France – to comply with their obligations under article 21 of the ICCPR.

V. Recent developments in policing peaceful assemblies in France

Weapons' testing

38. The General Comment addresses particularly well all the points related to weapons. Paragraph 92 states that "[s]tate parties should ensure that all weapons, including

[30] FOURMENT François, "*Encore un moment, Monsieur le bourreau!*", La Gazette du Palais, 7 mai 2019, n° 17, p. 44
[31] Internal Security Code, article L.211-2, para. 2: https://is.gd/i0Z9LU
[32] *Ibid.*
[33] *Ibid.*
[34] Para. 3, article 78-2-4 of the Code of Criminal Procedure: https://is.gd/u6Fk5W
[35] Para. 3, article 78-2-2 of the Code of Criminal Procedure: https://is.gd/4sk6qW
[36] Rapport du Défenseur des droits sur "*Le maintien de l' ordre au regard des règles de déontologie*", décembre 2017, p.37: https://is.gd/EcWDSw
[37] Art. 431-9-1 du Code pénal: https://is.gd/lme1De
[38] Constitutional Council, decision n°2019-780 DC of 4 April 2019, para. 29: https://is.gd/WIky3K

less-lethal weapons, are subject to strict independent testing and should evaluate and monitor their impact on the rights to life and bodily integrity and the mental well-being of those affected." The paragraph could be even more relevant by the addition of an obligation to draw conclusions from these tests.

39. The grenade "GLI F4"[39] used by French law enforcement officials in assemblies has been tested – or at least studied[40]. Yet, the *"Défenseur des droits"* called the ongoing use of this grenade "problematic" and its explosive effect potentially "dangerous".[41] Amnesty International mentioned the risk of « serious injuries » and required its ban[42]. Remedies were sought before the French State Council (*Conseil d'Etat*). An action of annulment of article D211-17 of the internal security Code, which allows the use GLI F4 for maintaining order, was brought before the highest French administrative court[43]. The applicants were pointing out that the use of GLI-F4 breaches article 2 (the right to life), article 3 (prohibition of torture) and article 10 (freedom of expression) of the European Convention on Human rights. The French State Council refused however to repeal the concerned article, explaining that the use of such a weapon is allowed as long as a strict test of proportionality and necessity is respected.
40. The French Minister of Interior, Christophe Castaner, made in January 2020 a statement announcing his intentions to withdraw the GLI F4[44]. However, the French legislation, to this day, remains unchanged and still authorizes the use of this grenade for maintaining order[45].

41. ***Recommendation:*** Considering this domestic example, we encourage the Human Right Committee to add an obligation to draw conclusions from the "independent testing" already required.

Relevant officials and units

42. The use in paragraph 87 of the notion of "relevant officials and units" during the policing of an assembly is important and could be strengthened by developing paragraph 92's obligation whereby "[w]herever possible, only law enforcement officials who have been trained in the policing of assemblies should be deployed for that purpose".

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[39] Instantaneous tear gas grenade with sound and blast effect.
[40] IGGN, IGPN, "*Rapport relatif à l'emploi des munitions en opérations de maintien de l'ordre*", 13 novembre 2014, p.13
[41] Défenseur des droits, "*Le maintien de l'ordre au regard des règles de déontologie*", *op. cit. 36*, p.30
[42] Amnesty International, "*France: Les autorités doivent suspendre le LBD40 et interdire les grenades GLI-F4 et de désencerclement dans le cadre du maintien de l'ordre des manifestations*", 3 mai 2019, https://amnestyfr.cdn.prismic.io/amnestyfr%2Fbc1434a2-ca33-436c-bf31-9ceeb919ba63_positionnement_lbd40_grenades_france+%281%29.pdf?fbclid=IwAR2l6ZJZn_jyW_rxNCB2RDVNi3Of-HMReAK64n47J_8PYUyvYmpM7GfuP9Q
[43] CE, cont., 24 juillet 2019, n°429741: https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000038815880 ; See BURG Marc, "Utilisation de la grenade GLI F4 lors des opérations de maintien de l'ordre", AJDA 2019, p. 2563.
[44] Official twitter account of French Minister of Interior, Christophe Castaner (tweet of the 26th of january 2020) : https://twitter.com/CCastaner/status/1221417588921638912?fbclid=IwAR2MnRipAkTVGsOuVJ_5YjZ2wjLg36J_Nn7gfJooOO6c8ROTTaFXtwFZ35A
[45] Art. D211-17 du Code de la sécurité intérieure : https://is.gd/ur8gW4

* *Risks of sending unspecialised units*

43. In the context of recent demonstrations that took place in France, some policing units have been denounced by NGOs and independent institutions as unspecialised in maintaining order.[46] According to the "*Défenseur des Droits"*, participation in the policing of assemblies of units such as the "anti-crime squad" (*Brigade anticriminalité*), the "company for securisation and intervention" *(Compagnie de sécurisation et d'intervention*) or the "repression of violent actions' squad" *(Brigade de répression des actions violentes*) departs from the common policy and principles of law enforcement during peaceful assemblies.[47] The "*Défenseur des droits"* explains that the behaviour of those units could jeopardize the efficiency of the general policing device, especially since their intervention method is perceived as "violent" in the context of policing assemblies.[48]

* *Inconsistency with the principle of de-escalating tensions*

44. The presence of unspecialised units is inconsistent with the principle of "de-escalating tensions" mentioned in paragraph 86 of the General Comment. This French practice in policing peaceful assemblies seems rather to fuel the escalate of tensions and violence.[49] Yet, the Venice Commission states that there is a "[d]uty to de-escalate tensions" and thus recalls that "[a] number of countries have units within police forces specifically set up to deal with de-escalation through dialogue".[50] The Venice Commission also links the duty to de-escalate tensions with the work of "relevant law enforcement bodies", suggesting that the type of units does matter in de-escalating tensions[51]. The "*Défenseur des droits*" similarly states that the most numerous incidents that he deals with and which occur during peaceful assemblies involve unspecialized units[52].

45. ***Recommendation:*** Considering the importance of having specialized and trained units policing the assemblies in order to protect the right of peaceful assembly, we encourage the Human Right Committee to create a specific paragraph related to the "relevant official units" and their training, which should as far as possible encompass legal, ethic and mediation issues.

[46] Amnesty International,"*France: Les autorités doivent suspendre le LBD40 et interdire les grenades GLI-F4 (...)*", *op. cit.* 48.
[47] Défenseur des droits, "*Le maintien de l'ordre au regard des règles de déontologie*", *op. cit.* 36, p.13.
[48] *Ibid*
[49] Observatoire parisien des libertés publiques, "*Rapport d'observation*", janvier 2020, p.8.
[50] OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, 2019, para. 88.
[51] *Ibid.*
[52] Défenseur des droits, *op.cit.* 36.

Background information on the Paris Human Rights Center and the authors of the submission

The ***Paris Human Rights Center*** (*Centre de recherche sur les droits de l'homme et le droit humanitaire – CRDH*, dir. Prof. O. de Frouville) is an academic research center, located at the University Paris II Panthéon-Assas. Since 1995, it has been developing a research project characterized by an integrated vision of all norms and institutions of international law related to the protection of human rights. It hosts both collective and individual research, by providing supervision and support for PhD students[53] and through a Master's program in human rights and humanitarian law (dir. Pr. S. Touzé).

The **Assas International Law Clinic (CDIA / AILC)** was founded in 2019. It is open to the participation of students in their final year of studies at *Paris II Panthéon-Assas* University, mainly those in the "*Master 2 Droits de l'Homme et Droit Humanitaire*" as well as the "*M2 Justice Pénale Internationale*". Clinic participants are given the opportunity to gain practical experience by collaborating with various institutional partners active in the fields of interest of the Clinic.

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[53] See for more details on the Center's activities: http://www.crdh.fr/