

Submission

to the

United Nations Human Rights Committee

on the

**General Comment No. 37 of Article 21 of the International Covenant on Civil
and Political Rights**

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INTRODUCTION

- 1.1. The Centre for Applied Legal Studies ('CALs') is a civil society organisation based at the School of Law at the University of the Witwatersrand, Johannesburg, South Africa. CALs is also a law clinic, registered with Legal Practice Council. As such, CALs connects the worlds of both academia and social justice. CALs' vision is that of a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights.
- 1.2. CALs operates across a range of programmes including the rule of law, business and human rights, environmental justice, basic services, and gender justice. CALs' Rule of Law Programme aims to advance certain civil and political rights, such as the right to protest, the right to freedom of expression, the rights of the arrested and detained, and the right of access to information.
- 1.3. As part of efforts to advance the right to peaceful assembly, the programme has been involved in a number of protest related matters through litigation where we have actively sought adequate protection of the right. In our work, we have realised that our clients have used the right to peaceful assembly as political tool for the advancement of their socio-economic right and as a means of enhancing participatory democracy.

- 1.4. CALS has historically engaged in numerous rule of law issues through its submissions to the South African Parliament and various International organisations. Some of CALS' submissions include submissions on South Africa's Compliance with the Covenant for Economic, Social and Cultural Rights;¹ the Independent Policing Investigative Directorate Amendment Bill;² and Submissions to OISD on Single Human Rights Body.³ The rest of the Rule of Law Programme's submissions can be accessed from our website.⁴
- 1.5. CALS makes these submissions jointly with the Right2Protest Project.
- 1.6. The Right2Protest Project (R2P) is a coalition of several civil society organisations and is based at the Centre for Applied Legal Studies at the University of Witwatersrand.
- 1.7. R2P focuses on the promotion and protection of the constitutional right to peaceful assembly through educational advocacy and litigation. R2P mainly engages in bail applications on behalf of participants in the event of arrests

¹ <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/rule-of-law/resources/CALS%20report%20to%20the%20Committee%20on%20ICESCR%20re%20South%20African%20compliance%20with%20the%20Covenant.pdf>

² <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/rule-of-law/resources/CALS%20Submissions%20on%20the%20IPID%20Amendment%20Bill%20June%202018.pdf>.

³ <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/rule-of-law/resources/CALS%20submissions%20to%20OISD%20re%20Single%20Human%20Rights%20Body%20-%2030%20June%202017.pdf>.

⁴ <https://www.wits.ac.za/cals/our-programmes/rule-of-law/>.

and it further runs a hotline where participants from all four corners of the Republic of South Africa are able to receive immediate and effective telephonic legal advice insofar as the constitutional right to peaceful assembly is concerned.

- 1.8. The scope and work of R2P also extends to engaging with relevant State officials on behalf of participants in order to enforce their right to peaceful assembly. Moreover, R2P serves a resource, training and information centre to other civil society organisations. R2P identifies the right to peaceful assembly as gateway right aiding access and realisation of other fundamental human rights and is invested in ensuring the protection this right.

- 1.9. In light of the above CALS and Right to Protest asserts that they are well-placed to comment on the substance of article 21 of the International Covenant for Civil and Political Rights and the draft General Comment number 37.

REFLECTIONS ON THE PROPOSED DRAFT

- 2.1. CALS and R2P would like to take this opportunity to thank the United Nations Human Rights Committee for the opportunity to make submissions on the General Comments number 37 on article 21.
- 2.2. CALS and R2P would like to express their endorsement of the proposed General Comment number 37. Notwithstanding this, we would however like to briefly reflect on two issues which can be seen as threats to the right to peaceful assembly in South Africa.

Imposing of fees to exercise right to peaceful assembly

- 2.3. This is carried out through the enforcement of Municipal By-Laws implemented in various regions within the State. The said regions have unlawfully categorised peaceful assembly as a “special events” which require payment of the prescribed fees.
- 2.4. Although the fees have not been used as a measure to prohibit peaceful assemblies, participants who fail to pay the fees essentially waive their right to state protection during proposed peaceful assembly.
- 2.5. These By-Laws unduly forces participants to pay the fee because they cannot risk not having state protection during a peaceful gathering. This, on the part of the state is a serious violation of international and domestic right of peaceful assembly as the state has a positive duty to ensure protection of participants during a peaceful assembly.

Strategic Litigation Against Public Participation (“SLAAP”).

- 2.6. Section 17 of the South African Constitution, 1996, guarantees “everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions”. At international law level, any restriction of the right to freedom of assembly can only be lawful if it is intended for a legitimate aim that is necessary in a democratic society.
- 2.7. However, we have noted with deep concern, that in South Africa, there has been an increase in the number of Strategic Litigation Against Public Participation (“SLAAP”) lawsuits against human rights defenders who wish to demonstrate peacefully in order to advocate for their socio-economic rights. Public participation and right to peaceful assembly are critical to the success of activism in any country. Without it, activists would be unable to consult their communities and mobilize them to action.
- 2.8. The aim of SLAAP lawsuits is to harass, suppress and silence human rights defenders by forcing them to spend money to defend baseless lawsuits. SLAAP lawsuits are utilised as tools to intimidate and victimise human rights defenders who are often unemployed and indigent.
- 2.9. Another common theme of the nature of victimisation due to SLAAP lawsuits is the involvement of police as a tool of suppression. It is not a crime to peacefully demonstrate via a protest in South Africa, but we have found that court orders can make it a crime for human rights defenders to do so.

Conclusion

In conclusion, we would like to thank the United Nations Human Rights Committee for the opportunity to provide our input to the General Comment. We are available for oral submissions should it be necessary. We look forward to further engagements.