

Facilitating and protecting the right of peaceful assembly of persons with disabilities

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Introduction

The right of peaceful assembly is guaranteed in article 21 of the International Covenant on Civil and Political Rights (ICCPR or Covenant),¹ as well as in many other international human rights instruments.² It has been said to be a particularly important participatory tool for disenfranchised and vulnerable groups.³ For voices that have traditionally been silenced, peaceful assembly could provide one of the most effective means of capturing the attention of authorities and the public generally. For example, in 1990, persons with disabilities in the United States staged a protest that came to be known as the ‘Capitol Crawl’ and the objective was to push the US Congress to pass the Americans with Disabilities Act of 1990.⁴ During the protest the participants abandoned their assistive devices and crawled up the steps of the Capitol Building, bringing into sharp focus the challenges faced by persons with disabilities, and catalysing the passage of the Americans with Disabilities Act.⁵

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1 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

2 See for example, art 20 of the Universal Declaration of Human Rights, art 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) ETS. No. 5, and art 11 of the African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1981) 1520 UNTS 217.

3 UN Human Rights Committee, General Comment 37: Article 21 (The Right of Peaceful Assembly), 2020, CCPR/C/GC/37, para 2.

4 L Lantry, ‘On 30th anniversary of disability civil rights protest, advocates push for more,’ *ABC News*, 12 March 2020, <https://abcnews.go.com/US/30th-anniversary-disability-civil-rights-protest-advocates-push/story?id=69491417> (accessed 31 December 2021).

5 As above.

Being part of the larger society, persons with disabilities can also take part in assemblies that pursue other causes that do not exclusively involve issues touching on persons with disabilities. While assemblies are generally understood to be physical gatherings, they may also occur exclusively online, or there may be those that have both online and offline aspects.⁶ In all cases, persons with disabilities may not be able to enjoy their right of peaceful assembly on equal terms as the rest of the society unless an enabling environment is created for them. The question then is: How can states ensure that persons with disabilities exercise their right of peaceful assembly on equal terms with others?

This essay seeks to answer this question. It focuses on the state obligation to facilitate and protect the right of peaceful assembly of persons with disabilities. It starts by highlighting the scope of state obligations in relation to the right of peaceful assembly generally. This exposition is followed by an explanation for the need for enhanced state obligations in respect of persons with disabilities. Thereafter, there is a discussion on the barriers to the effective exercise of the right of peaceful assembly by persons with disabilities and lastly, a discussion on measures states can put in place to ensure their right of peaceful assembly.

The scope of state obligations

Article 21 of the ICCPR requires states to recognise the right of peaceful assembly and prescribes the limits of the restrictions that may be imposed. In addition, article 2(1) of the Covenant states that '[e]ach State Party to the ... Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the ... Covenant, without distinction of any kind'. These duties have both positive and negative aspects.

The duty to respect requires states not to interfere with the exercise of the right of peaceful assembly.⁷ This means that states should allow peaceful assemblies to take place unhindered and only impose restrictions in conformity with the requirements of article 21. As the United Nations (UN) Human Rights Committee has often emphasised, whenever states impose restrictions, they should be guided by the objective of facilitating the exercise of the right and not disproportionately limiting it.⁸ The obligation not to interfere should

6 *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Clément Voule, UN Human Rights Council, A/HRC/41/41, 17 May 2019, paras 10-11. Also see General Comment 37 (n 3) para 6.

7 General Comment 37 (n 3) para 8.

8 See, for example, *Turchenyak et al v Belarus*, Communication 1948/2010, Views adopted 10 September 2013, CCPR/C/108/D/1948/2010, para 7.4.

also be guided by the principle of content neutrality,⁹ in the sense that states should not interfere with assemblies even where the assembly participants pursue controversial ideas. Neither should they attempt to limit the ideas of assembly participants, provided that they are not prohibited under article 20 of the Covenant.¹⁰

In spite of the fact that the right of peaceful assembly is guaranteed in the domestic laws of 184 states, some states frequently violate the right by imposing disproportionate restrictions, and also through the use of force.¹¹ It is true that in order to balance the rights of assembly participants and those of other members of the public, states need to regulate the conduct of assemblies, a role mainly played by law enforcement officials. However, as the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns observed in his reports to the Human Rights Council, the use of force and firearms in the context of assemblies can have devastating consequences to the right to life and bodily integrity.¹² The duty to respect thus requires states to enact laws and regulations that constrain the powers of law enforcement officials to use force. In his review of the laws on the use of force and firearms by law enforcement officials, Heyns noted that most states have general laws that apply in all contexts where the use of force becomes necessary.¹³ He identified the problem with such laws as their imprecise nature, which may allow law enforcement officials to stretch the circumstances under which force or firearms may be used in the context of assemblies.¹⁴ Therefore, in order for the duty to respect to be adequately complied with, the laws on the use of force and firearms in the context of assemblies should be precise enough to regulate the conduct of law enforcement agents. A case can be made for even more precise guidelines in relation to the use of force against persons with disabilities.

The duty not to interfere extends to the digital space where assemblies also take place wholly or partially. In their joint report on the

9 General Comment 37 (n 3) para 22.

10 Art 20 of the ICCPR prohibits propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

11 The UN Human Rights Council has in the past adopted various resolutions calling on states to refrain from using excessive force in the context of assemblies. See for example Resolution 38/11, *The promotion and protection of human rights in the context of peaceful protests*, A/HRC/RES/38/11, UN Human Rights Council, adopted 6 July 2018, preamble.

12 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Christof Heyns, A/HRC/17/28, UN Human Rights Council, 23 May 2011 (2011 Report). Also see *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Christof Heyns, A/HRC/26/36, UN Human Rights Council, 1 April 2014.

13 2011 Report (n 12) paras 96-7.

14 2011 Report (n 12) para 98.

proper management of assemblies, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns noted that the protections for physical gatherings could be extended to similar interactions online.¹⁵ Consequently, states should refrain from interferences such as internet shutdowns, the blocking of online content, and government sponsored trolling of activists.¹⁶

In addition to the obligation to respect, states also have the obligation to ensure which requires states to take positive measures to give effect to the rights under the Covenant.¹⁷ An important way of giving effect to the right of peaceful assembly is by adopting domestic laws and other measures that guarantee the enjoyment of article 21.¹⁸ Such laws should provide both substantive and procedural guarantees for the right. In addition, they must be in conformity with international standards. This has been emphasised by the Human Rights Committee in its Views and Concluding Observations. For example, in relation to an Act in the Netherlands which allowed authorities to prohibit assemblies for which a notification was not issued, the Committee recommended that the law in question be reviewed ‘...with a view to removing the prohibition on demonstrations due to a lack of prior notification and to bringing the Act in line with article 21 of the Covenant and other relevant international standards.’¹⁹ The Committee further recommended that the Netherlands provides law enforcement officials and local administrative authorities ‘...with clear guidance on dealing with demonstrations so as to ensure a safe and enabling environment to exercise the right to peaceful assembly’.²⁰

In addition to legislative measures, the duty to ensure further requires states to protect assemblies.²¹ Thus, states must take all feasible measures to protect the rights of assembly participants against violations by both state actors and private individuals or entities. The fact that there is a likelihood of assembly participants being attacked owing to their controversial views is not sufficient reason to prohibit an assembly

15 *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*, Maina Kiai, Christof Heyns, UN Human Rights Council, A/HRC/31/66, 4 February 2016, para 10.

16 A/HRC/41/41 (n 6) paras 29-57.

17 For an explanation on the nature of the obligation to ensure, see W Schabas *UN Covenant on Civil and Political Rights: Nowak's CCPR commentary* (NP Engel 2019 at 42, para 24.

18 Art 2(2) of the ICCPR.

19 Concluding Observations, Netherlands (CCPR/C/NLD/CO/5), March 2020, paras 60-61.

20 As above.

21 Schabas (n 17).

or impose other restrictions.²² In exceptional circumstances where an assembly has to be prohibited, states must demonstrate that they would not be able to protect the assembly participants from a grave threat to their safety 'even if significant law enforcement capability were to be deployed'.²³ In cases where violations are committed in spite of all attempts to prevent them, states have an obligation under article 3 of the Covenant to ensure that persons whose rights have been violated have access to a remedy.

States should also facilitate the exercise for the right of peaceful assembly.²⁴ This means they should take positive measures to enable an assembly to take place peacefully. Facilitative measures may include clearing traffic, providing spaces within which the right can be exercised, ensuring availability of medical assistance, among other measures. The obligation to facilitate applies even in the context of spontaneous demonstrations or other assemblies where notification requirements under domestic laws were not complied with. Understandably, the extent of facilitation of spontaneous or non-notified assemblies may not be the same as those for which the authorities had prior notice and time to prepare. However, spontaneous assemblies are not unusual occurrences and therefore authorities should always have contingency plans in place to be able to appropriately respond to them.

With respect to persons with disabilities, states have obligations under both the ICCPR and the Convention on the Rights of Persons with Disabilities (CRPD).²⁵ Although the CRPD does not have a specific provision guaranteeing the right of peaceful assembly of persons with disabilities, it has a number of provisions relevant to the exercise of the right of peaceful assembly. Article 3 of the CRPD sets out the general principles of the CRPD which include non-discrimination and full and effective participation and inclusion in society. In addition, article 19 calls on state parties to 'recognize the equal right of all persons with disabilities to live in the community, with choices equal to others' and to 'take effective and appropriate measures to facilitate ... their full inclusion and participation in the community, including by ensuring that 'community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.' Further, article 29 of the CRPD explicitly recognises the rights of persons with disabilities to participate in political and public life. It requires States Parties to create an enabling environment for the full and effective participation of persons with disabilities in public

22 General Comment 37 (n 3) para 52.

23 As above.

24 General Comment 37 (n 3) para 8.

25 Convention on the Rights of Persons with Disabilities (CRPD) adopted on 13 December 2006 UN Doc A/61/611 (entered into force 3 May 2008).

affairs. In her report to the Human Rights Council, the UN Special Rapporteur on the rights of persons with disabilities recognised that the right of peaceful assembly is a means of public participation by persons with disabilities.²⁶ Read alongside the ICCPR, the provisions of the CRPD cited above require the protection of the right of peaceful assembly of persons with disabilities.

Of importance also is the CRPD's principle of reasonable accommodation which means 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.'²⁷ Under the CRPD, the denial of reasonable accommodation is itself a form of discrimination.²⁸ States should therefore ensure that measures are taken to reasonably accommodate the needs of persons with disabilities exercising their right of peaceful assembly.

The case for enhanced state obligations in relation to persons with disabilities

Literature in the UN human rights system strongly supports the position that state obligations should be enhanced in relation to certain vulnerable groups, including persons with disabilities. In their joint report on the proper management of assemblies, 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 recognised that 'particular effort should be made to ensure equal and effective protection of the rights of groups or individuals who have historically experienced discrimination'.²⁹ They further noted that authorities may be required to take additional measures to protect and facilitate the exercise of the right to freedom of assembly by such groups.³⁰ This position was reiterated in the Committee's General Comment 37 on the right of peaceful assembly, which in addition states that the interpretation and application of laws governing the conduct of assemblies must not lead to discrimination on any ground, including on the basis of disability.³¹

26 *Report of the Special Rapporteur on the rights of persons with disabilities*, Catalina Devandas Aguilar, A/HRC/31/62, UN Human Rights Council, 12 January 2016, para 18.

27 Convention on the Rights of Persons with Disabilities (n 25) art 2.

28 As above.

29 *Joint report on the proper management of assemblies*, Maina Kiai, Christof Heyns (n 15) para 16.

30 As above.

31 General Comment 37 (n 3) para 8.

It is important to note that in relation to the interpretation and application of laws, discrimination may result from applying laws equally without considering the particular circumstances of persons with disabilities. For example, in *HM v Sweden*³² where Swedish authorities neutrally applied the provisions of a law and on that basis denied the author the permission to adapt her residence to her needs as a person with disability, the Committee on the Rights of Persons with Disabilities (CRPD Committee) held that the neutral application of the law resulted into the discrimination of the author.³³ It also concluded that Sweden had denied the author reasonable accommodation, contrary to the provisions of the CRPD.³⁴ Although this case did not concern the right of peaceful assembly, the interpretation of the CRPD Committee on the neutral application of laws can also be applied in the context of interpretation and application of laws governing the conduct of assemblies.

In relation to the use of weapons in the context of public order operations, persons with disabilities may be more greatly affected by the use of certain weapons compared to other members of the public. Consequently, it has been stated that law enforcement officials should exercise a higher level of precaution with respect to persons with greater vulnerabilities.³⁵ For example, while the effects of teargas on persons who can quickly flee to a safe distance would be generally minimal, a person whose mobility is limited may likely suffer more adverse effects.

Persons with disabilities may also be victims of police violence in cases where they fail to heed police commands or warnings due to an inability to hear or comprehend the instructions, or where they are simply unable to run. In 2017, for example, Angolan police were condemned for attacking peaceful protesters in wheelchairs and beating one of them until he fell off his wheelchair.³⁶ Similar incidents have happened in other countries.³⁷ In all cases where force is used, the principles of legality, precaution, necessity, proportionality, non-discrimination and accountability must be applied. However, as stated

32 *HM v Sweden*, Communication 3/2011, CRPD/C/7/D/3/2011 (19 April 2012).

33 *HM v Sweden* (n 32) para 8.4.

34 As above.

35 OHCHR, UN Human Rights Guidance on Less-lethal Weapons in Law Enforcement (2020) para 2.11.

36 Human Rights Watch, Angolan Police Attack Protesters in Wheelchairs, 25 April 2017, <https://www.hrw.org/news/2017/04/25/angolan-police-attack-protesters-wheelchairs> (accessed 31 December 2021).

37 For example, during the anti-coup protests in Myanmar in 2021, a physically and mentally disable person was attacked by military officials while he was helping other protesters clean up a site after a protest. While the other protesters managed to run, he couldn't. See 'Viral Protesters with Disabilities Beaten, Myanmar Military And Police Reap Condemnation', *VOI News*, 20 February 2021, <https://voi.id/en/news/34371/viral-protesters-with-disabilities-beaten-myanmar-military-and-police-reap-condemnation> (accessed 31 December 2021).

before, greater precaution should be exercised in relation to persons with disabilities.

Barriers to effective participation of persons with disabilities in peaceful assemblies

In spite of the understanding that states have an enhanced obligation to facilitate and protect the right to peaceful assembly of persons with disabilities, in reality they hardly ever enjoy the right on equal terms with others. Generally, the obstacles to the exercise of the right of peaceful assembly cut across all groups, and they are numerous. In his first thematic report to the Human Rights Council in 2018, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association identified a number of factors that affect the exercise of this right.³⁸ Among those he listed are: retrogressive laws that restrict the exercise of the right of peaceful assembly; criminalisation of participation in assemblies; excessive use of force by law enforcement officials during assemblies; repression of social movements; reprisals against members of the civil society; restrictions targeting particular groups; and restrictions and interferences in the digital space.³⁹

Aside from these barriers which cut across all groups, persons with disabilities face other challenges specific to their situations. In terms of the language of the CRPD, disability results from ‘the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society’.⁴⁰ Barriers have in turn been defined as factors in a person’s environment whose absence or presence limit functioning and create disability.⁴¹ A wide range of barriers may affect the ability of persons with disabilities to fully and effectively exercise their right of peaceful assembly. Selected issues are discussed in the next section.

Legal and procedural barriers

Public order laws in most states provide for either notification or authorisation procedures which must be complied with before an assembly lawfully takes place. In the absence of legal provisions that accommodate the specific needs of persons with disabilities, challenges

38 *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Clément Voule, UN Human Rights Council, A/HRC/38/34, 26 July 2018.

39 As above.

40 Convention on the Rights of Persons with Disabilities (n 25) Preamble para (e).

41 World Health Organization, *International classification of functioning, disability and health* (2001) at 222, <http://apps.who.int/iris/bitstream/handle/10665/42407/9241545429.pdf;jsessionid=FCA8B18D1599EDD5A9F993CE48E0B030?sequence=1> (accessed 31 December 2021).

in lodging notifications or seeking authorisations may be experienced. At the same time, if public order laws are not available in accessible formats or platforms, some persons with disabilities may not know what is required of them in terms of compliance. The domestic laws of most states consider assemblies that are held contrary to the requirements of their public order laws as unlawful.⁴² The implication is that law enforcement officials may interfere with such assemblies even if they are peaceful. Unless mechanisms are put in place to ensure that persons with disabilities have adequate access to compliance procedures, they will either not hold assemblies at all or law enforcement agencies may easily justify interfering with assemblies organised by persons with disabilities.

Further, public order laws and laws governing the use of force and firearms by law enforcement officials may not incorporate specific guidance that enhance protection of persons with disabilities. Consequently, the impact of the use of force against them may be greater compared to other participants. The potential for violence from law enforcement or other members of the public has a significant chilling effect on the ability of persons with disabilities to enjoy their right of peaceful assembly.

Physical barriers

Article 9 of the CRPD requires state parties to take appropriate measures to ensure that persons with disabilities have, on an equal basis with others, access to the physical environment, transportation, information and communication systems and other facilities or services open or provided to the public. In-person assemblies present a variety of difficulties to persons with disabilities. For example, buildings or physical spaces that are not designed to accommodate the needs of persons with disabilities may not be accessed by them.

An important aspect of the effective exercise of the right of peaceful assembly is that participants must be able to hold their assembly within the sight and sound of their target audience.⁴³ If a particular site is of significance to the objectives of an assembly, the sight and sound principle is defeated if the site is inaccessible to persons with disabilities. While authorities may designate alternative spaces, the objectives of the assembly may still be diminished if the accessible site is not within the reach of the target audience. Organisers of assemblies may fail to

42 See for example, Kenya's Public Order Act (1950), Cap 56, Laws of Kenya. Section 5(2) of the Act provides that any gathering held without a prior notice having been issued is unlawful and the participants may be arrested and prosecuted for taking part in an unlawful assembly.

43 General Comment 37 (n 3) para 22. Also see *Strizhak v Belarus*, Communication 2260/2013, CCPR/C/124/D/2260/2013, views adopted 1 November 2018, para 6.5.

take measure to ensure that other assembly participants do not conduct themselves in a way that limits the participation of assembly participants who have disabilities. For example, wheelchair and cane users may experience difficulty in navigating crowded assemblies. Further, in the event of violence from the public or the police, the safety of persons with disabilities can be seriously compromised both by the police and the assembly participants who may knock them over while running for safety. These obstacles would likely make persons with disabilities avoid participating in in-person assemblies.

Accessibility of transportation may also have an impact on the participation of persons with disabilities in assemblies. Unless deliberate efforts are made to provide accessible transportation services, they may be left behind.

Communication barriers

Communication barriers exist during the planning phase of an assembly, at the actual assembly and even after the assembly. In relation to the planning phase, accessing information about planned assemblies has been a major concern for some persons with disabilities, especially those with hearing and visibility impairments.⁴⁴ Further, organisers of assemblies do not always involve persons with disabilities during planning. Without their involvement during the planning process, their needs may not be given due consideration.

As for communication during in-person assemblies, the participation of persons with hearing impairments is limited unless sign language interpreters are available. At the same time, the communication barrier between them and the police may expose them to violence from police officers who may mistake their unresponsiveness to commands for defiance. Technological platforms that are not adapted to the requirements of some persons with disabilities also limit their participation in online assemblies.

Like other assembly participants, persons with disabilities may be arrested following events at an assembly. In the absence of measures to facilitate effective communication between persons with disabilities and law enforcement officials, they may be exposed to numerous human rights violations. Their participation in criminal proceedings may equally be inhibited to their detriment.

44 D Bora & others (2017) 'ActVirtual: making public activism accessible' in *Proceedings of the 19th International Association for Computing Machinery's Special Interest Group on Accessible Computing (ACM SIGACCESS) Conference on Computers and Accessibility*. New York, USA at 307-308.

Attitudinal barriers

Societal attitudes towards persons with disabilities may also hinder their participation in assemblies, and other aspects of public life. In particular, persons with mental disabilities face greater stigma both from the public and the authorities.⁴⁵ Stereotypes about persons with mental disabilities being violent may lead to their isolation, and even them being subjected to violence.⁴⁶ As such, they enjoy extremely limited state protection of their right of peaceful assembly. These limitations also apply to persons with other disabilities, although not to the same extent. It has been stated that states must ensure that the voices of persons with disabilities, including those with psychosocial disabilities are heard.⁴⁷

Enhancing the full and effective participation of persons with disabilities in assemblies

The CRPD Committee in General Comment 7 on the participation of persons with disabilities specifies that ‘full and effective participation ... in society refers to engaging with all persons, including persons with disabilities, to provide for a sense of belonging to and being part of society. This includes being encouraged and receiving appropriate support ... to participate in society, and being free from stigma and feeling safe and respected when expressing oneself in public.’⁴⁸ As a means of enhancing the monitoring and implementation of the CRPD, the CRPD Committee further emphasises the need for enabling environments to be created for persons with disabilities to exercise their rights under articles 19 (freedom of expression), 21 (right of peaceful assembly) and 22 (freedom of association) of the ICCPR.⁴⁹ States therefore have a duty to ensure that they facilitate the full and effective exercise of the right of peaceful assembly by persons with disabilities. Bearing in mind the barriers discussed above, there are a number of measures that states, and organisers too, can put in place to ensure more inclusive participation of persons with disabilities in peaceful

45 M Waltz & A Schippers ‘Politically disabled: barriers and facilitating factors affecting people with disabilities in political life within the European Union’ (2021) 36(4) *Disability & Society* 517 at 525.

46 *Report of the Special Rapporteur on the rights of persons with disabilities*, Catalina Devandas-Aguilar, UN Human Rights Council, A/HRC/40/54, 11 January 2019, para 27.

47 A/HRC/31/62 (n 26) para 60.

48 UN Committee on the Rights of Persons with Disabilities, General Comment 7 on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention, CRPD/C/GC/7, 9 November 2018, para 27.

49 General Comment 7 (n 48) para 29.

assemblies. The CRPD's principle of reasonable accommodation should also be adhered to where the right of peaceful assembly of persons with disabilities is engaged. However, what would it look like in practice?

To begin with, states have to ensure that laws on assemblies provide reasonable accommodation for the specific needs of persons with disabilities. For example, public order laws should leave room for flexibility in their interpretation and application of their requirements to persons with disabilities. For example, some laws provide specific guidance on the use of force and firearms against children, with the restriction being more narrowly drawn than restrictions on the use of force against adults.⁵⁰ Similar guidance would enhance the protection of persons with disabilities participating in assemblies.

Where states have notification regimes, the procedures for issuing the notices should be accessible to persons with disabilities. Accessibility here means physical access of relevant authorities as well as providing documents in accessible formats, or allowing the lodgment of notifications through digital means. There should also be flexibility in the enforcement of notification requirements. Thus, a failure to notify should not be the sole basis for interfering with an assembly, or not facilitating it. In relation to states that have authorisation regimes, the Human Rights Committee has stated that such regimes should operate as notification regimes⁵¹ whose purpose is to enable state authorities to prepare in advance to facilitate an assembly.

It was stated earlier that in the context of assemblies, persons with disabilities are generally at a greater risk of violence than others. To ensure their safety while taking part in in-person assemblies, there is need for protective interventions from the security agencies against disruption of the peaceful assemblies by third parties. At the same time, the police should also refrain from using specific less-lethal weapons such as tear gas against persons with certain disabilities, or assembly participants generally if doing so would have disproportionately adverse effects on persons with disabilities participating in an assembly.⁵² In general policing tactics should as much as possible be adapted to cater for the needs of persons with disabilities. Understandably, police officers may not always be able to adapt their tactics to the peculiar needs of all individuals participating in assemblies. However, one of the principles that guide the use of force by law enforcement officials in any context is the principle of precaution which requires them to plan their operations in a way that reduces the need for them to resort

50 For example, in Kenya the National Police Service Act, 2011 provides that 'police officer shall make every effort to avoid the use of firearms, especially against children.' See National Police Service Act, 2011, Sixth Schedule, Part B, para 3.

51 General Comment 37 (n 3) para 73.

52 Guidance on Less-lethal Weapons in Law Enforcement (n 35) paras 2.7 and 2.11.

to the use of force.⁵³ In the context of an assembly, in order for the police to effectively adapt their tactics to ensure protection of persons with disabilities, while still discharging their obligation to ensure public order and safety, prior engagements with organisers of assemblies is necessary. This would enable the police to take measures ‘upstream’ to minimise the likelihood of using force that may have disproportionate impacts on persons with disabilities participating in an assembly.

The UN Special Rapporteur on the rights of persons with disabilities has noted that due to the belief that persons with psychosocial disabilities are prone to violence, the nature of their disability can heighten discrimination against them.⁵⁴ The belief that they are dangerous can also influence how much force law enforcement officials use against them. In its General Comment on the right to life, the Human Rights Committee has stated that persons with disabilities are entitled to ‘specific measures of protection so as to ensure their effective enjoyment of the right to life on an equal basis with others’.⁵⁵ In addition, specific measures must be taken ‘to prevent unwarranted use of force by law enforcement agents against persons with disabilities’.⁵⁶ It is therefore necessary for states to adequately train law enforcement officials on the proper management of assemblies and human rights, generally. At the same time, law enforcement officials should be equipped with appropriate crowd control weapons and receive training on their use. Training acts as a precautionary measure that can reduce the likelihood of police officers resorting to force in unwarranted circumstances.

For organisers, practical measures such as selecting sites that can be easily accessed by persons with disabilities can go a long way in enhancing their participation. For example, if a disability-friendly private property is close enough to a public space that is inappropriate for persons with disabilities, the private space may be used. Questions may arise about the right of the public to access and use private property without the owner’s consent. The Human Rights Committee, citing the case of *Appleby v United Kingdom*,⁵⁷ decided by a chamber of the European Court of Human Rights has set out a number of factors to be considered when balancing between the rights of owners of private property and the right of peaceful assembly of those seeking to use the private space. Among the factors to be considered are: whether the private space is ordinarily accessible to the public, the nature

53 S Maslen & S Connolly *Police use of force under international law* (CUP 2017) at 95.

54 *Report of the Special Rapporteur on the rights of persons with disabilities*, UN Human Rights Council, A/HRC/40/54, 11 January 2019, para. 27.

55 UN Human Rights Committee, General Comment 36: Article 6 (The Right to life), 2018, CCPR/C/GC/36, para. 24.

56 As above.

57 European Court of Human Rights, *Appleby and others v United Kingdom*, Application 44306/98, Judgment of 6 May 2003.

and magnitude of interference with the rights of the property owner, whether the ownership of the property is itself being contested by the assembly participants; and whether there are alternative sites that can equally achieve the objectives of the assembly.⁵⁸ In the *Appleby* case which concerned the freedom of expression, the European Court held that states must regulate private property rights in a way that does not hinder the freedom of expression.⁵⁹ This view can also be applied in the context of the right of peaceful assembly. Where an assembly can only be held at a site with historical significance and which is inaccessible to persons with disabilities, they should nevertheless be involved. Since assemblies can be held virtually and in-person simultaneously, the digital space offers a useful alternative for them to participate. Experience has shown that assemblies held in online spaces can be just as effective as offline assemblies, or they may greatly enhance the effectiveness of in-person assemblies.⁶⁰

Importantly, involving persons with disabilities in the planning phase can also help in addressing many of their needs. Many protests are now held entirely or partially through digital platforms which provide arguably safer platforms for persons with disabilities to participate, if well adapted to their needs. Organisers should ensure that digital communication is shared in accessible formats. Where possible, if the assembly is a protest march, organisers can plan to get wheelchairs for participants with mobility impairments who do not have them and Sign Language interpreters for those with hearing impairments. Admittedly, organisers may not always have funds to be able to secure assistive devices for persons with mobility or other challenges.

An example of good practice for organisers and state authorities is the accessible march for the #BlackLivesMatter⁶¹ movement held in Milwaukee, US, in June 2021.⁶² Noting that persons with disabilities hardly participated in the #BlackLivesMatter protests, three members of Milwaukee's disability community organised an accessible march for persons with disabilities.⁶³ The organisers took care to select a route that was more disability-friendly, ensured that there were American

58 General Comment 37 (n 3) para 57.

59 *Appleby and others v United Kingdom* (n 57) para 47.

60 Take for example the #BlackLivesMatter Movement in the US and across the world, and Nigeria's #EndSARS protests which occurred both online and offline.

61 #BlackLives Matter is a social movement founded in 2013 in the United States in response to the acquittal of a police officer who killed Trayvon Martin, an African American male. See <https://blacklivesmatter.com/about/> (accessed 31 December 2021).

62 R Linnane 'People with disabilities lead hundreds in a more accessible protest against police violence in Milwaukee' *Milwaukee Journal Sentinel*, 7 June 2021, <https://www.jsonline.com/story/news/2020/06/07/milwaukee-people-disabilities-lead-accessible-protest-police-brutality-george-floyd/3173136001/> (accessed 31 December 2021).

63 As above.

Sign Language interpreters and arranged for frequent rest stops. Since the march took place in the midst of the COVID-19 pandemic and some persons with disabilities have compromised immune systems, the organisers ensured that participants wore masks and kept a safe distance from each other.⁶⁴ There was also no report of any interference with the march by State authorities. This inclusive approach can be used by other organisers of assemblies, whether or not they have disabilities.

Conclusion

This essay aims to explain how states can facilitate and protect the right of peaceful assembly of persons with disabilities. It first sets out the state obligation in relation to the right of peaceful assembly generally, and explains why states have enhanced obligations in relation to the protection of the right of peaceful assembly of persons with disabilities. It notes that the international human rights system generally recognises that states have enhanced obligations in relation to vulnerable groups, such as persons with disabilities. It also notes that although the CRPD does not expressly guarantee the right of peaceful assembly, it nevertheless has provisions that require states to ensure full and effective participation of persons with disabilities in public life. Thus, the obligation of states to ensure the right of peaceful assembly of persons with disability stem from both the ICCPR and the CRPD. Unfortunately, due to several barriers which were discussed in this paper, persons with disabilities rarely get to enjoy their right under article 21 of the ICCPR on equal terms with others. Some of the barriers are state-imposed, for example through domestic laws that are not responsive to the needs of persons with disabilities, or imprecise laws on the use of force by law enforcement officials that leave too much room for justifying the use of force against persons with disabilities. Structural barriers such as communication challenges or difficulties in physical accessibility also impede the right of peaceful assembly. It shows that the barriers can be reduced or eliminated if certain measures are taken, such as providing specific guidance to law enforcement on the use of force against persons with disabilities, adopting flexible approaches in the interpretation and application of public order laws, and training law enforcement officials. It was also shown that aside from states, organisers, such as those in the Milwaukee example, can take practical steps to enhance participation of persons with disabilities in assemblies. Much remains to be done to bridge the gap between participation in assemblies by persons with disabilities and participation by others.

64 As above.