

# **The Right of Peaceful Assembly in Online Spaces: A Comment on the Revised Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights**

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## **Introduction**

This submission builds upon the discussions at an expert workshop held in December 2019 at the Centre of Governance and Human Rights (CGHR), University of Cambridge, that was co-organized with the European Center for Not-for-Profit Law (ECNL) and the University of East Anglia Law School. It also draws on the background research paper prepared in advance of that event.<sup>1</sup>

The summary recommendations below recognize the need not to unduly stretch the ordinary meaning of the term ‘assembly’ and are premised on an acknowledgment that the applicable doctrines and duties governing assemblies in online spaces may be different from those pertaining to face-to-face assemblies.

In considering the nature of online assemblies, three contextual particularities deserve attention:

- 1) Although online assemblies share many characteristics of face-to-face assemblies, these may be altered by digital mediation across place and time. For example, digital mediation may afford more and/or different distortions, forms of surveillance, discrimination and chilling effects; less and/or different cues to support the interpretation of communication within the assembly; and more and/or different external logics that inflect the nature of the assembly in question, particularly commercial logics governing the often privately-owned spaces of online assemblies.
- 2) Many of the words we use to describe these online assemblies misleadingly connote a dichotomy between online and offline spaces, rather than the hybridity in which these spaces are inhabited and used. These words, such as virtual and cyberspace, also connote a disembodiment of the assembly that can have harmful effects through disassociating it from the bodies and materials involved in the assembly. This connotation of immateriality can obscure the very real physical risks to those participating in online assemblies, as well as the ways in which assemblies might be interfered with, such as through the blocking or destruction of internet infrastructure.

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<sup>1</sup> McPherson, E. et al., (November 2019), *Right to Online Assembly Research Pack*, Centre of Governance and Human Rights, University of Cambridge, <http://www.cghr.polis.cam.ac.uk/research-themes/human-rights-in-the-digital-age-1/Assembly/right-to-online-assembly/view>. This publication analyses key debates around important parameters of Article 21: publicly-accessible but privately-owned spaces; presence and participation; temporality; peacefulness; and state obligations with regard to online assemblies.

- 3) The range of information and communication technologies is evolving rapidly, so any consideration of these is best informed not by what these technologies *are* in terms of specific characteristics, but what they do, broadly understood as digital mediation across place and time, and the effects that this mediation has.

It is argued here that General Comment 37 should go further to recognize appropriate protections for gatherings in online spaces. This submission considers and makes recommendations first, in relation to the implications of digital mediation for the *scope* of the right of peaceful assembly and, second, in relation to restrictions on the right and related state obligations.

## 1) Online assembly and the scope of the right of peaceful assembly

The Human Rights Committee has previously recognized the benefits of adopting an open and inclusive approach to determining the scope of rights within the Covenant. A decision, for example, was taken not to expressly include particular forms of expression in the text of General Comment 34, ‘on the understanding that the list of forms of expression must always be an open one ....’<sup>2</sup> Similarly, the European Court of Human Rights has sought to ‘avert the risk of a restrictive interpretation’ of the right to freedom of peaceful assembly, refraining ‘from formulating the notion of an assembly ... or exhaustively listing the criteria which would define it ...’<sup>3</sup>

The revised draft of General Comment 37 goes some way to acknowledging that the exercise of the right of assembly is not confined to face-to-face gatherings:

*‘... although the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, comparable human rights protections also apply to acts of collective expression through digital means, for example online.’<sup>4</sup>*

Considering that social action is increasingly mediated by information and communication technologies (ICTs) and recognizing too the blended and hybrid nature of online and offline activity, the right of peaceful assembly must be capable of offering protection to new and dynamic forms of gathering. The multiple ways in which people choose to gather with others in online spaces – including gatherings that may be neither primarily expressive nor formally associative – ought to engage the protection of Article 21 ICCPR. In this section, we consider the implications of digital mediation for the purposes of an assembly, the measure of presence and participation, the temporality of assemblies and the nature of peacefulness.

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<sup>2</sup> Michael O’Flaherty, ‘Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee’s General Comment No 34’ (2012) 12(4) *Human Rights Law Review* 627 at 648.

<sup>3</sup> *Navalny v Russia*, Application Nos. 29580/12 and four others, [GC] judgment of 15 November 2018, para 98.

<sup>4</sup> Human Rights Committee, ‘General Comment No. 37 Article 21: right of peaceful assembly.’ Revised draft prepared by the Rapporteur, Mr. Christof Heyns and as adopted on First Reading during the 127th Session (14 October – 8 November 2019) para 15.

**a) The purposes of an assembly may be neither ‘common’ nor ‘expressive’**

The Draft General Comment recognises a range of purposes that assemblies may fulfil (paras 1-2) and describes assemblies as having both ‘a *common expressive* purpose’<sup>5</sup> and an inherent ‘associative element’.<sup>6</sup>

It is suggested here, however, that the Article 21 right is not coextensive with freedom of expression or association and should not be subordinated to these cognate rights. While the exercise of the right of peaceful assembly may sometimes have an avowedly expressive purpose and also involves ‘associating’ with others (with varying degrees of proximity and organization), an assembly might not aim at expression and may involve amorphous and transient gatherings (absent the characteristics of more formally constituted groups). The fluid boundaries between these interdependent rights are especially important to recognize in the context of assemblies mediated through digital means.

The meaning of ‘expressive’ – presented in the draft General Comment as a core definitional element of the scope of the right – is itself unclear and vulnerable to differential interpretation. It might be read to imply communication to an external audience (whether this is intended by participants or inferred merely by virtue their having gathered) or discussion internally between assembly participants. This ambiguity is amplified in the context of online assemblies where communicative intent and reach may be more difficult to assess or measure. In any case, the possibility of such different interpretations undermines the utility of incorporating ‘expressive purpose’ as a definitional anchor.

The right of peaceful assembly protects the possibility of interpersonal connection that arises when people come together with others.<sup>7</sup> The interpretation of Article 21 must therefore be capable of capturing less organised forms of connective action where there is a level of diversity in the purposes pursued by individual participants, also recognizing that individuals are ‘self-motivated’ and that purpose may be deeply personalized.<sup>8</sup> Indeed, as with face-to-face gatherings, the purpose(s) of online assemblies can vary over time and may depart from the specific ideas of a movement’s organisers or initiators. This dynamic is captured by the recognition (also in para 4) that ‘the right of peaceful assembly constitutes an individual right that is exercised collectively’.

**Recommendation: The definition of ‘assembly’ in para 4 should remain open to a multiplicity of purposes and should not be limited to a (single) ‘common’ or ‘expressive’ purpose.**

<sup>5</sup> General Comment 37, Revised draft (n4) para 4.

<sup>6</sup> Ibid.

<sup>7</sup> As Paulo Gerbaudo notes, online activities do not only ‘convey abstract opinions’ but ‘give a shape to the way in which people come together and act together.’ See Gerbaudo’s analysis of the Arab spring in Egypt, Indignados movement in Spain and Occupy Wall Street in the USA in: Gerbaudo, P., (2012), *Tweets and the Streets*, Pluto Press

<sup>8</sup> Bennett, W. L., and Segerberg, A., (2012), ‘The Logic of Connective Action’, *Information, Communication & Society*, 15:5, p. 754

**b) The use of digital means requires an expansive approach to defining presence and participation in peaceful assemblies**

In addition to the text of para 15 of the draft General Comment (quoted above), para 12 holds that core to ‘establishing whether someone’s right of peaceful assembly is protected by article 21’ is the ‘establish[ment of] whether the conduct in question falls within the scope of the protection offered by the right. It must thus be determined whether the conduct amounts to participation in a “peaceful assembly”’.

An assembly requires the presence of ‘a number of individuals’.<sup>9</sup> This collective aspect is inherent to the Article 21 right and distinguishes it from (the aggregation of) individual expressions. If it is also assumed that an *intention to gather* is a necessary component of participation in an assembly,<sup>10</sup> then merely being present at an event (or the online equivalent) will not constitute participation.

In most elaborations of the right to peaceful assembly, the individuals that are protected are referred to as ‘participants’. However, the terms ‘participant’ and ‘participation’ lack clarity<sup>11</sup> and allow for different degrees of involvement, activity and commitment. This has implications for understanding what actions are protected both online and offline.

Digital communications obfuscate who is participating and whether they are actively present. Given, however, that the protection afforded to face-to-face gatherings is not contingent on the level of commitment that individual participants may demonstrate, it would be difficult to establish a higher threshold for participation in an assembly online.

Digital technologies have generated new spaces and means of participation, often enabling greater accessibility and ease of action.<sup>12</sup> Questions arise as to whether participation is constituted by, for example, the use of hashtags, registering for or joining online gatherings or meetings (which may or may not convey a message to an external audience), ‘liking’ an online page or being a non-active member of an online group.

Without more explicit protection, there is a risk not only that individuals participating online may be denied protection, but also that gatherings that are either part or wholly online may not be recognised by states either as assemblies or as activities that are integral to assembling and thus deserving of protection under Article 21. In recent years, several high-profile cases have highlighted this problem, including the banning of an Erdoğan video link to a rally in Germany in 2016<sup>13</sup> and the fining of Singaporean activist Jolovan Wham for holding an unauthorized indoor assembly featuring a Skype call from Hong Kong activist Joshua Wong in 2016.<sup>14</sup>

<sup>9</sup> OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly* (2<sup>nd</sup> edition, 2010) p.15, para 1.2, and p.29.

<sup>10</sup> *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai* (21 May 2012) A/HRC/20/27, para 24.

<sup>11</sup> *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule* (17 May 2019) A/HRC/41/41.

<sup>12</sup> Bennett, W. L. and Segerberg A., (2012), ‘The Logic of Connective Action’, *Information, Communication & Society*, 15:5

<sup>13</sup> The Guardian, (2016), *Turkey condemns German court for banning Erdoğan video link to rally*. Available at: <https://www.theguardian.com/world/2016/jul/31/erdogan-supporters-cologne-germany-turkish-rally>

<sup>14</sup> Hong Kong Free Press, (2017), *Singapore charges activist for holding public assemblies, including a Skype talk with Joshua Wong*. Available at: <https://www.hongkongfp.com/2017/11/28/singapore-charges-activist-for-holding-public-assemblies-including-a-skype-talk-with-joshua-wong/>

The above examples also highlight how the exercise of the right of peaceful assembly online can spill across national borders, either having extraterritorial effects or being affected by extraterritorial actors, whether states or otherwise. Concerning the exercise of jurisdiction over online assemblies, which in traditional human rights law would require either control over territory or over person, the General Comment should address how these concepts play out in the online realm.<sup>15</sup>

Where exactly the minimum bar for participation should be drawn is a question which General Comment 37 is unlikely to conclusively resolve. Nonetheless, in considering digitally mediated assemblies, and protecting the rights of individuals as regards them, there is merit in recommending an expansive definition of participation that both protects the rights of individuals and is the basis for limiting, rather than imposing, restrictions on participation.

**Recommendation: A sentence may be added to para 15, after footnote 14, that reads, 'Participation in assemblies is likely to take new and different forms using digital means, requiring an expansive interpretation of individual acts amounting to participation.'**

### c) Online spaces complicate any understanding of assemblies as temporary

The element of 'temporariness' (an imprecise term with unclear parameters) does not feature in those paragraphs of the draft General Comment which elaborate the scope of the right (paragraphs 4 and 13). However, paragraph 62, which addresses restrictions on the *time* of assemblies, makes several comments relevant to the duration of an assembly:

*'While there are no fixed rules about restrictions on the duration of peaceful assemblies, participants must have sufficient opportunity to effectively manifest their views. Peaceful assemblies are generally by their nature temporary and should be left to end by themselves.... The duration and frequency of a demonstration may play a central role in conveying its message to its target audience.'*

Due to the affordances of ICTs, participants are distributed across time and space, leading to difficulty in determining both the duration and the synchronicity of participation. For example, participants can post to a social media platform in seconds, and it is not possible, from the perspective of a viewer of the posts (though it may well be possible from inside the social media company), to be sure that more than one person is ever present (as in actively viewing and participating) in a social media thread at the same time. From the individual's perspective, however, the intention to assemble in a proximate temporality, in a proximate place and with a proximate purpose may nevertheless be strong.

On the other hand, digital traces arguably render online assemblies more permanent than offline gatherings. The permanence of posts creates a risk to participants of future adverse consequences (including reprisals, imprisonment, police brutality and government-mandated

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<sup>15</sup> See for instance Altwick, T., (2018), 'Transnationalising Rights: International Human Rights Law in Cross-Border Contexts', 29(2) *European Journal of International Law* 581-606 or Berkes, A., (2019), 'Human Rights Obligations of the Territorial state in Cyberspace of Areas Outside Its Effective Control' 52(2) *Israel Law Review* 197-231; further more generally Schmitt, M. N., (2017), *Tallinn Manual 2.0 on the Law Applicable to Cyber Operations*, 2<sup>nd</sup> ed, Cambridge: Cambridge University Press.

shutting down of the internet).<sup>16</sup> The state's use of technology to uncover the identities of online participants, as well as the deployment of punitive counter-measures against participants based on their past connection to online assemblies, could be considered a violation of Article 21.

**Recommendation: The following sentences (or wording to this effect) might be added to para 62: 'A lack of strict synchronicity of participation by digital means should not preclude such participation from constituting an assembly. The permanent trace left by digital participation should not be used to restrict or undermine the exercise of the right to peaceful assembly online.'**

#### d) Peaceful and non-peaceful in online contexts

The conceptualisation of 'peacefulness' in the context of online spaces may conjure different modes and forms of behaviour (including trolling, hacktivism, DoS/DDoS attacks and other acts of service disruption that target – for example – corporate, government or military websites). Some such activities fall outside the protective scope of either expression or assembly, but, to the extent that they involve intentional gatherings, may on occasion be viewed as analogous to sit-ins and occupations. As such, the attendant disruption of web traffic (whether this is to flows of information, data or finance) ought to be afforded some level of toleration and should not be equated with non-peacefulness (such as would exclude it from the scope of the right).<sup>17</sup>

**Recommendation: The following sentence might be added to the end of para 17: 'Similarly, service disruption caused by digital means should not be equated with violence but should be tolerated to a certain degree.'**

## 2) Restrictions on the right of peaceful assembly online and corresponding obligations

The statement in paragraph 15 of the draft General Comment – that 'the fact that people can communicate online should not be used as a ground for restrictions on in-person assemblies' – is a welcome rejection of 'alternative channels'-type reasoning. However, there is more that General Comment 37 could say to recognize the structural obstacles that condition and restrict the exercise of the right of peaceful assembly through digital means.

All spaces are imbued with particular logics that reflect and give effect to functional priorities (such as flow and passage, quietude or commercial profitability). Such logics also often operate to exclude unruly or undesirable uses (vagrancy, revelry, protest etc) and to incentivize narrowly beneficent purposes (consumption, movement, recreation, education, debate etc.).<sup>18</sup> The regulation of assemblies should not merely reinforce these inherent logics, and the General Comment should expressly recognize the particular logics that shape online

<sup>16</sup> Africa News, (16th January 2019). *Zimbabwe Protest: #thisflag pastor arrested on final day of protests*. Available at: <https://www.africanews.com/2019/01/16/zimbabwe-protests-have-the-authorities-shut-down-the-internet/>

<sup>17</sup> Calabrese, A., (2004), 'Virtual nonviolence? Civil disobedience and political violence in the information age'. *info*, 6(5), 326-338.

<sup>18</sup> Fenwick, H. and Hamilton, M., (2017), 'Freedom of protest and assembly', chapter 9 in *Fenwick on Civil Liberties*, London: Routledge, 554 at 601.

assemblies. These include the opportunities that these technologies and corresponding online spaces allow for state logics to enter, as well as, crucially, the commercial, profit-driven logics that shape many privately-owned ICTs.

The orthodox logics governing online places, which tend to be anchored in private rather than public ownership, can interfere with the nature and modalities of assemblies, including at the stages of the production, transmission and reception of any communicative elements (whether expression or interaction). For example, at the production stage, the logic of profit encourages particular types of communication in order to be picked up by the algorithm that determines visibility, including communications that create a context hostile to particular groups. At the transmission stage, these algorithms determine what is visible to whom – and what is invisible. At the reception stage, the model of surveillance capitalism also sets the stage for easy eavesdropping by external parties, both commercial and governmental.

In paragraph 38 of the draft General Comment, it is stated that:

*‘In the digital age, many of these associated activities happen online or otherwise rely upon digital services. Such associated activities are also protected under article 21. States parties shall, for example, refrain from unduly blocking Internet connectivity in relation to demonstrations.<sup>19</sup> The same applies to geo-targeted or technology-specific interference or hindering of connectivity. States parties should ensure that self-regulation by Internet service providers does not unduly affect assemblies and that the activities of those providers do not unduly infringe upon the privacy or safety of assembly participants. Any restrictions on the operation of information dissemination systems must conform with the tests for restrictions on freedom of expression.’*

This is as far as the General Comment goes to recognize or address the particular logics that shape assemblies in online spaces. The focus of paragraph 38, however, is primarily on the impact of regulatory activities upon face-to-face assemblies (and specifically, on the ‘associated activities’ outlined in paragraph 37, such as ‘dissemination of information about an upcoming event; travelling to the event; communication between participants leading up to and during the assembly; conveying information about the assembly to the outside world; and leaving the assembly afterwards’).

We submit that the General Comment does not adequately recognize or address the particular logics that shape assemblies in online spaces. These logics potentially inhibit online assemblies in at least two ways – (a) restrictions on access; and (b) chilling effects on participation, experienced unequally.

#### **a) Online assemblies face particular restrictions on access**

Access to affordable and independent internet services is not only important for the exercise of the right to peaceful assembly online, but also considerably facilitates the exercise of this right offline. As Frank La Rue, the former UN Special Rapporteur on the Right to Freedom of Expression, has observed, the internet has become ‘an *indispensable tool for full participation in political, cultural, social and economic life*’.<sup>20</sup> And while the Rapporteur’s call for internet

<sup>19</sup> CCPR/C/CMR/CO/5, *Concluding observations on the fifth periodic report of Cameroon* (30 November 2017) para. 41.

<sup>20</sup> Frank La Rue, ‘*Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*’ (UN GA Doc. A/66/290, 10 August 2011), para. 63; the UN Human Rights

access to be maintained even in times of political unrest was made with respect to freedom of expression, it is thus arguably equally pertinent with regard to the right to peaceful assembly.<sup>21</sup> In past instances, states have restricted access to online spaces through various mechanisms.

One example is the use of internet switch-offs, such as in Egypt, Libya and Syria in 2011.<sup>22</sup> It has been argued that ‘using communications “kill switches” (i.e. shutting down entire parts of communication systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law’.<sup>23</sup> Other examples include the blocking of websites and social networking platforms or interference with hashtags. The latter might include flooding a hashtag with tweets generated by bots, making it difficult for participants to sustain interactions with each other and possibly triggering the social media platform algorithms that limit the visibility of hashtags artificially pumped up through the use of bots.<sup>24</sup>

In this regard, States’ obligations of non-interference under Article 21 should be extended to include the misuse of digital technologies.<sup>25</sup>

## **b) Potential participants in online assemblies are subject to chilling effects, experienced unequally**

While much of the preceding text has been with reference to individuals who are participating or trying to participate, thought must also be given to those who do not feel comfortable participating because of the logic of the place in which they are assembling. For example, the commercial logics of mainstream platforms may create hostile contexts that disproportionately affect minorities, such as racist search results that are a direct outcome of search engine’s advertising structures.<sup>26</sup> In another example, Amnesty found that a cohort of 778 female journalists and politicians in the UK and US received one abusive or problematic

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Council since adopted a non-binding resolution condemning the states that intentionally disrupt citizens’ access to the internet, see Human Rights Council, ‘*The Promotion, Protection and Enjoyment of Human Rights on the Internet*’ (UN Doc. A/HRC/32/L.20, 27 June 2016); cf. PoKempner, D. (2013), ‘Cyberspace and State Obligations in the Area of Human Rights’ in (ed) Ziolkowski, K., *Peacetime Regime for State Activities in Cyberspace: International Law, International Relations and Diplomacy*, NATO OCCD COE Publication: Tallinn, who argues that access to information online is a necessary condition for the fulfilment of many human rights and should thus itself be considered a human right.

<sup>21</sup> Frank La Rue, ‘*Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*’ (UNGA, Human Rights Council 17<sup>th</sup> Session, UNGA Doc. A/HRC/17/27, 16 May 2011), para. 78, 79.

<sup>22</sup> See “*Egypt’s big internet disconnect*” Available at:

<http://www.theguardian.com/commentisfree/2011/jan/31/egypt-internet-uncensored-cutoff-disconnect>, “*The truth about Twitter, Facebook and the uprisings in the Arab world*” Available at:

<http://www.theguardian.com/world/2011/feb/25/twitter-facebook-uprisings-arab-libya>

<sup>23</sup> OSCE, ‘*Joint Declaration on Freedom of Expression and Access to Information*’ (1 June 2011) Available at: <https://www.osce.org/fom/78309?download=true>

<sup>24</sup> Daniel, L., (2016), *Rise of the Peñabots*, Available at: <https://points.datasociety.net/rise-of-the-penabots-d35f9fe12d67>

<sup>25</sup> Article 19, ‘*The Right to Protest Principles: Background Paper*’ (2016). Available at:

<https://www.article19.org/data/files/medialibrary/38581/Protest-Background-paper-Final-April-2016.pdf>, observing that measures such as blocking, filtering, or removal of online content should be prohibited as they are ‘almost always likely to be disproportionate, as there is a significant danger of over-blocking.’

<sup>26</sup> Noble, S. U., (2018), *Algorithms of Oppression: How Search Engines Reinforce Racism*, New York: NYU Press.



tweet every 30 seconds, and that black women received 84% more of these tweets than white women.<sup>27</sup> Individuals who restrict their participation in assemblies because of toxic online environments are denied their right to assemble at a much earlier stage – that of the decision about whether or not to participate in the first place.

The threat of surveillance capitalism<sup>28</sup> and its enablement of state surveillance, is also silencing due to the risk that one will be identified and tracked, with subsequent consequences.<sup>29</sup> The UN Human Rights Council has recognised that ‘privacy online is important for the realisation of the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association.’<sup>30</sup> It accordingly emphasised that ‘technical solutions to secure and protect the confidentiality of digital communications, including measures for encryption and anonymity, can be important to ensure the enjoyment of human rights, in particular [...] to freedom of peaceful assembly and association.’<sup>31</sup> The ability to communicate and associate with others without identifying oneself is a necessary requirement to exercise one’s freedom of assembly, speech and privacy.<sup>32</sup> Like online discrimination, surveillance is not an equal opportunity silencer, but one that disproportionately impacts potential participants who, because of their identities and the way these identity groups have been treated by their governments in the past and present, are most wary of being monitored.<sup>33</sup>

**Recommendation: The General Comment should take into account any potential effects that collection and commodification of participants’ (personal) data may have on the exercise of their human rights, in particular any chilling effect private surveillance/monitoring may have on their enjoyment, the potentially (ethically/legally) offensive effect of the monetisation of human rights or discriminatory and inhibiting barriers to access assembly sites.**

**After the 2nd sentence of para 8, the inclusion of the following sentence should be considered: ‘Facilitating the exercise of the right includes addressing discriminatory barriers to participation arising from the logics of the space in which an assembly takes place.’**

**While para 28 emphasizes that States must not deal with assemblies in a discriminatory manner, it might additionally be emphasized that States must take positive steps to address**

<sup>27</sup> Amnesty International, *Troll Patrol*, Available at: <https://decoders.amnesty.org/projects/troll-patrol/findings>

<sup>28</sup> Zuboff, S., (2019), *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, London: Profile Books

<sup>29</sup> McPherson, E., (2018), ‘Risk and the Pluralism of Digital Human Rights Fact-Finding and Advocacy’, *New Technologies for Human Rights Law and Practice*, eds Land, M. K. and Aronson, J. D., 188–214. Cambridge: Cambridge University Press.

<sup>30</sup> Human Rights Council, The Promotion, Protection and Enjoyment of Human Rights on the Internet, UN Doc. A/HRC/38/L.10/Rev.1 (4 July 2018), preamble; cf. Rona, G. and Aarons, L., (2016), ‘State Responsibility to Respect, Protect, and Fulfil Human Rights Obligations in Cyberspace’ 8 *Journal of National Security Law & Policy* 503, 513.

<sup>31</sup> *Ibid.*

<sup>32</sup> Rona, G. and Aarons, L., (2016), ‘State Responsibility to Respect, Protect, and Fulfil Human Rights Obligations in Cyberspace’, 8 *Journal of National Security Law & Policy* 503, 513.

<sup>33</sup> Noble, S. U., (2018), *Algorithms of Oppression: How Search Engines Reinforce Racism*, New York: NYU Press.

discrimination that has the effect of limiting participation, including through the use of digital means.

Alternatively, such an addition could be placed in either para 27 (which outlines the positive duty to facilitate assemblies and promote an enabling environment ‘and to make it possible for participants to achieve their legitimate objectives’) or para 112, which emphasizes that ‘The right to non-discrimination protects participants against discriminatory practices in the context of assemblies (art. 26).’

In para 37 (which extends protection to activities conducted outside the immediate scope of a gathering but that are integral to making the exercise of the right meaningful), the words ‘The obligations of States parties thus extend to actions ...’ might be supplemented with ‘(including those using digital means/technologies).’