

**INTERNATIONAL BAR ASSOCIATION’S HUMAN RIGHTS INSTITUTE,
THE INTERNATIONAL COMMISSION OF JURISTS AND
THE CENTRE FOR CIVIL AND POLITICAL RIGHTS**

**JOINT OPINION ON COMPLIANCE OF THE DRAFT LAW ON THE
PROCEDURE FOR ORGANISING AND HOLDING PEACEFUL
ASSEMBLIES WITH THE REPUBLIC OF KAZAKHSTAN’S HUMAN
RIGHTS OBLIGATIONS**

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Overview

This Joint Expert Opinion of the International Bar Association’s Human Rights Institute (IBAHRI), the International Commission of Jurists (ICJ) and the Centre for Civil and Political Rights (CCPR Centre) examines the conformity of the Draft Law “On the Procedure of Organising and Holding Peaceful Assemblies in the Republic of Kazakhstan” (Draft Law) that is currently under consideration before the Senate of Kazakhstan with Kazakhstan’s international human rights obligations. The Opinion summarizes some of the primary concerns raised by the Draft Law in light of Kazakhstan’s obligations to protect the freedom of peaceful assembly under article 21 of the International Covenant on Civil and Political Rights, and in light of the OSCE/Venice Commission Guidelines on Freedom of Assembly (“OSCE Guidelines”).¹

*The Opinion concludes that as drafted, the proposed legislation includes of number of restrictions on freedom of assembly that are fundamentally contrary to Kazakhstan’s human rights obligations, including (1) excessive notification and approval requirements; (2) excessive authority to ban an assembly; (3) a prohibition on spontaneous assemblies; (4) restriction of assemblies to specific locations; (5) preferential treatment for assemblies organized by the government; (6) a prohibition against foreigners, refugees, stateless persons from organising or participating in assemblies, (7) excessive obligations on organizers and participants; and (8) excessive sanctions for organizers and participants. Additional problematic aspects of the law have been identified, *inter alia*, in the letter of 21 April 2020 from the UN Special Rapporteur on Freedom of Assembly, Clement Nyaletsossi Voule, to the President of the Republic.*

The timing and process for adopting a law that so fundamentally impacts domestic compliance with core human rights obligations itself raises serious human rights concerns, given the limited ability of civil society organizations and the general public to participate in a robust public debate regarding the Draft Law during the COVID-19 quarantine. Both the Venice Commission of the Council of Europe and the UN Human Rights Committee have recognized that legislation, in order to be legitimate and adopted consistent with the rule of law and fundamental human rights, must be subject to inclusive, meaningful and transparent public debate, both in the legislature and in the society in general.²

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¹ OSCE ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly (2nd edition, 2010) (hereinafter “Guidelines”).

²Venice Commission, *The Rule of Law Checklist* (2016) at 21 (law making procedures); UNHRC, *Concluding Observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6 (2018), para. 8 (“especially in relation to laws affecting the enjoyment of

In light of these serious human rights concerns, the International Bar Association's Human Rights Institute, the International Commission of Jurists and the CCPR Centre recommend that the Senate and the President of the Republic of Kazakhstan halt consideration of the Draft Law and seek guidance from the OSCE/ODIHR Panel of Experts on Freedom of Assembly and Association, the Office of UN High Commissioner on Human Rights, and/or the Venice Commission regarding how the current law on freedom of peaceful assembly might be revised consistent with Kazakhstan's international human rights obligations.

Context

The Republic of Kazakhstan is a state party to the International Covenant on Civil and Political Rights (ICCPR) and a member of the Organisation on Security and Co-operation in Europe (OSCE). Presently, peaceful assemblies are regulated by the Law “On the Procedure of Organising and Holding Peaceful Assemblies, Rallies, Processions, Picketing and Demonstrations in the Republic of Kazakhstan”³ adopted in 1995. Following the mass rallies in 2019, the President of the Republic declared that a new law on peaceful assembly would be adopted. On 7 February 2020, the Ministry of Information and Social Development introduced the Draft Law “On the Procedure of Organising and Holding Peaceful Assemblies in the Republic of Kazakhstan.”⁴ The Draft Law was considered by the Mazhilis - the Lower Chamber of the Parliament - during the quarantine due to the COVID-19 pandemic, causing widespread criticism from civil society and human rights experts. Despite that, the Draft Law was adopted by the Mazhilis on 8 April 2020 and submitted to the Senate. The Senate held its first hearing on the Draft Law on 30 April 2020.

Respect for freedom of peaceful assembly in Kazakhstan has been the subject of both concern and recommendations to Kazakhstan by numerous UN entities,⁵ including recommendations from the UN Human Rights Committee (UNHRC) in its reviews of Kazakhstan's periodic reports under the ICCPR, recommendations of UN member states in the context of Kazakhstan's Universal Periodic Review in the UN Human Rights Council, as well as by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association after his mission to Kazakhstan in 2015. The UN Human Rights Committee also has found violations of the freedom of peaceful assembly under Kazakhstan's current legal regime in numerous individual cases.⁶

Freedom of Peaceful Assembly

Article 21 of the ICCPR provides that “The right of peaceful assembly shall be recognized.” That article has been extensively interpreted by the UN Human Rights Committee, which is the authoritative body established by the ICCPR to monitor state compliance. The Committee's jurisprudence under article 21 is set forth in individual cases and periodic reviews involving Kazakhstan and other states, as well as in the Committee's draft General Comment No. 37 on the

human rights, [the state party should ensure] that mechanisms are in place to guarantee a transparent, inclusive and participatory process that involves opposition politicians, civil society, other relevant stakeholders and the general public, and provides adequate opportunity and time for the meaningful review and proper debate of legislative proposals and amendments” consistent with articles 2, 15 ICCPR).

³ See <http://adilet.zan.kz/rus/docs/U950002126>.

⁴ See the latest version: <http://senate.parlam.kz/ru-RU/lawProjects/download?fileId=26842>.

⁵ See OHCHR Kazakhstan, <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/KZIndex.aspx>.

⁶ See, e.g., *Insenova v. Kazakhstan*, CCPR/C/126/D/2542/2015 (2019); *Suleimenova v. Kazakhstan*, CCPR/C/126/D/2416/2014 (2019); *Abildaeva v. Kazakhstan*, CCPR/C/125/D/2309/2013 (2019); *Dzhumanbaev v. Kazakhstan*, CCPR/C/125/D/2308/2013 (2019); *Toregozhina v. Kazakhstan*, CCPR/C/126/D/2311/2013 (2019); *Ukteshbaev v. Kazakhstan*, CCPR/C/126/D/2420/2014 (2019); *Zhagiparov vs. Kazakhstan*, CCPR/C/124/D/2441/2014 (2018); *Toregozhina v. Kazakhstan*, CCPR/C/124/DR/2257/2013 and CCPR/C/124/DR/2334/2014 (2018); *Sviridov v. Kazakhstan*, CCPR/C/120/D/2158/2012 (2017); *Toregozhina vs. Kazakhstan*, CCPR/C/112/D/2137/2012 (2014).

freedom of assembly⁷ a compilation of the Committee’s jurisprudence that sets forth the Committee’s authoritative interpretation of the nature and scope of the right to peaceful assembly.

As the Human Rights Committee observed in a recent case involving Kazakhstan, “*the right to peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual’s views and opinions and indispensable in a democratic society.*”⁸ That right entails the possibility of organizing and participating in a non-violent gathering of persons with a common expressive purpose. It is also closely related to the ability to exercise a number of other core human rights, including freedom of expression and association and the right to political participation.

Under article 2(1) of the Covenant, states parties are obligated to both respect and ensure the right to peaceful assembly. This requires states to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right to freedom of peaceful assembly, in order to help ensure the participants achieve their legitimate objective. States must thus promote an enabling environment for exercise of the right to peaceful assembly.⁹ Assemblies have the potential to disrupt other legitimate activities and to interfere with the rights and freedoms of others, and they therefore can be subject to regulation. However, there is a presumption against restrictions,¹⁰ and the allowable grounds for restrictions under article 21 must be construed narrowly. Moreover, under article 21, any restriction provided for by law must be both necessary in a democratic society and proportionate to one of the permissible grounds for restrictions specifically enumerated in article 21. Any restrictions on freedom of peaceful assembly “*should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it. The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant and to demonstrate that it does not serve as a disproportionate obstacle to the exercise of the right.*”¹¹ This means, inter alia, that the measure must be the least intrusive means available to secure the valid protective function.¹² Finally, regulation of the right to peaceful assembly must not infringe on other human rights, including freedom of expression, association and political participation.

Main Concerns

The current Draft Law goes well beyond the allowable restrictions on freedom of peaceful assembly in a number of ways. The following is a summary of some of the core concerns:

1. Excessive notification and approval requirements for organising a peaceful assembly

Articles 10 and 12 of the Draft Law require the organisers of all peaceful assemblies to pursue burdensome prior notification or approval procedures, respectively, depending on the type of assembly. Organizers must submit detailed *notification* information five working days in advance of any assemblies, rallies and pickets, as defined in the law. For marches and demonstrations, organizers must seek prior *approval* 10 working days in advance. The Articles require persons providing notification or seeking authorisation of an assembly to provide an extensive list of information, including “*the purpose*”, “*form*”, “*anticipated number of participants*”, “*the sources of financing of the peaceful assembly*,” etc. Authorization requests must also indicate “*measures that will be taken to ensure public order, provide medical assistance, fire safety*,” and “*the total number and categories of means of*

⁷UNHRC, *Draft General Comment No. 37 on Article 21: The right of peaceful assembly* (2019) (hereinafter draft UNHRC General Comment), available at <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>. The Committee has completed its first reading of draft General Comment No. 37. Although the draft General Comment remains subject to minor revision and approval by the Committee, the provisions referenced herein reflect established interpretations of the Human Rights Committee.

⁸*Suleimenova v. Kazakhstan* (2019), para. 9.4.

⁹Draft UNHRC General Comment, para. 8; *see also* paras. 26-27.

¹⁰OSCE *Guidelines*, para. 2.1.

¹¹*Suleimenova v. Kazakhstan* (2019), para. 9.4.

¹²Draft UNHRC General Comment, para. 45.

transportation.” Under Article 15, before the time period for review of the notification or request for approval expires, it is illegal even to publicly talk about the assembly. Finally, even the notification procedure appears to function as a *de facto* approval requirement, as the Draft Law establishes extremely broad grounds on which the state may prohibit any assembly, including technical failure to comply the application requirements, as discussed below.

Separately and in combination, these requirements impose excessive restrictions on freedom of peaceful assembly, contrary to article 21. In particular, they are contrary to the principles that states should facilitate the freedom of peaceful assembly and that any restrictions on the right must be narrowly drawn. As the Human Rights Committee previously concluded with respect to Kazakhstan,

*a requirement to notify the authorities of a planned peaceful assembly, or to seek authorization for such a public event if such an authorization is granted as a matter of course, does not in itself violate article 21 if its application is in line with the provisions of the Covenant. At the same time, authorization regimes in which the authorities have broad discretion as to whether to grant permission to assemble should, in general, not be imposed. In all events, in situations in which a notification or authorization procedure is used, it should not be overly burdensome.*¹³ (Emphasis added)

Requiring advance *authorization* for all marches and demonstrations is contrary to article 21, since assemblies ordinarily should be allowed, and facilitated, as a matter of course. The Human Rights Committee’s draft General Comment elaborates as follows,

*Authorization regimes, where those wishing to assemble have to apply for permission (or a permit) from the authorities to do so, undercut the idea that peaceful assembly is a basic right. Where such requirements persist, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise. Such systems should also not be overly bureaucratic.*¹⁴ (Emphasis added)

Likewise, the OSCE Guidelines provide that “Any such legal provision should require the organizer of an assembly to submit a notice of intent rather than a request for permission.” (Para. 4.1)

Moreover, *notification* of an assembly must not be burdensome and cannot be required in all circumstances. As the draft UNHRC General Comment observes,

*[a notification]requirement is permissible to the extent necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others. At the same time, this requirement can be misused to stifle peaceful assemblies. Like other interferences with the right of assembly, notification requirements have to be justifiable on the grounds listed in article 21. The enforcement of notification requirements must not become an end in itself. Notification procedures should not be unduly burdensome and must be proportionate to the potential public impact of the assembly concerned.*¹⁵

Finally, the prohibition on discussing an assembly prior to authorization or the review period for notification is contrary to obligations with respect to freedom of assembly, and also improperly restricts the freedom of expression and association. The Human Rights Committee has previously held that publicity for an upcoming assembly before notification has taken place cannot be penalized in the absence of a specific indication of what dangers would have been created by the early

¹³*Suleimenova vs. Kazakhstan* (2019), para. 9.5.

¹⁴ Draft UNHRC General Comment, para. 84, citing CCPR/C/MAR/CO/6, para.45; CCPR/C/GMB/CO/2, para.41; and ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para.71; *Poliakov v. Belarus*, para. 8.3.

¹⁵ Draft UNHRC General Comment, para. 80, citing, *inter alia*, *Kivenmaa v. Finland*, para. 9.2; *Popova v. Russian Federation*, para.7.5; *Sekerko v. Belarus*, para. 9.4.

distribution of the information.¹⁶ According to the draft UNHRC General Comment, a state's obligations under article 21 "extend to actions such as participants' or organizers' dissemination of information about an upcoming event; [and] communication between participants leading up to and during the assembly [...] Any restrictions on such communications also must be narrowly construed." In addition, "any restrictions on the operation of information dissemination systems must conform with the tests for restrictions on freedom of expression." (Paras. 37-38) The OSCE Guidelines likewise recognize that "[t]he regulatory authority should ensure that the general public has adequate access to reliable information relating to public assemblies." (Para. 63)

2. Excessive authority to ban an assembly

The notification and authorization regime above is particularly problematic given the very broad grounds on which the Draft Law allows an assembly to be prohibited.

Article 14 of the Draft Law list extensive grounds on which authorities can refuse to authorize an assembly. These range from technical noncompliance with the application requirements (such as "incomplete information" or failure to sign), to excessive participants for the "specially designated place" or concurrent assemblies, to such broad rationales as undermining national security, "incit[ing] social . . . national [or] class discord," violating any laws or regulatory acts of Kazakhstan, or the possibility that the assembly may interfere with public transport, "threaten ... small architectural forms" or "impede the free movement" of persons not participating in the assembly.

Prohibiting peaceful assemblies on such expansive grounds is not consistent with article 21. International human rights law is clear that the presumption should be in favour of holding an assembly and that any restrictions imposed on the right to peaceful assembly must be narrowly applied. Technical noncompliance with a regulatory regime should not be grounds for prohibiting an assembly. As the Human Rights Committee observed in the context of Kazakhstan, "[e]ven in the case of assemblies for which no notification has been given and a request for authorization has not been submitted, any interference with the right to peaceful assembly must be justified under the second sentence of article 21."¹⁷ Even for the grounds in the Draft Law that might in principle be consistent with the grounds for restricting an assembly set forth in article 21 (such as public safety), the Draft Law does not provide limiting definitions that might ensure this consistency. For example, the Human Rights Committee has indicated that a restriction for protection of "public safety" under article 21 requires a state to establish that the particular assembly "creates a significant and immediate risk of danger to the safety of persons (to their life or physical integrity) or a similar risk of serious damage to property."¹⁸ And as noted above, the Human Rights Committee previously has expressed concern that the Kazakhstan notification/approval regime gave excessive discretion to authorities as to whether to grant permission for an assembly.¹⁹

3. Prohibition on spontaneous assemblies

The Draft Law does not allow for any assemblies that are not notified or authorised in advance. Spontaneous assemblies therefore are prohibited -- a restriction that is contrary to article 21.

The Human Rights Committee previously has found that punishing a participant in an assembly that was peaceful but unauthorized, and the failure to allow spontaneous assemblies, violated Kazakhstan's human rights obligations.²⁰ Likewise, in *Popova v. Russian Federation*,²¹ the Committee

¹⁶*Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008), para. 9.3; see also *Evezon and others v. Belarus* (CCPR/C/112/D/1999/2010 and Corr.1), para. 8.5; Draft UNHRC General Comment. paras. 37-38.

¹⁷*Suleimenova vs. Kazakhstan* (2019), para. 9.5.

¹⁸Draft UNHRC General Comment, para. 49.

¹⁹*Suleimenova vs. Kazakhstan* (2019), para. 9.5.

²⁰*Abildayeva vs. Kazakhstan* (2019), para.8.7 ("The State party has also failed to demonstrate why spontaneous assemblies are not protected.").

found that the administrative arrest and fine of an individual for participating in a spontaneous peaceful demonstration that was not notified under domestic law violated article 21. The Committee stated:

while a system of prior notices may be important for the smooth conduct of public demonstrations, their enforcement cannot become an end in itself. Any interference with the right to peaceful assembly must still be justified by the State party in the light of the second sentence of article 21. This is particularly true for spontaneous demonstrations, which cannot by their very nature be subject to a lengthy system of submitting a prior notice. (Para. 7.5)

The draft UNHRC General Comment further explains that “spontaneous assemblies, as direct responses to current events that do not allow enough time to provide such notification, whether coordinated or not, are also protected by article 21.” (Para. 16) Accordingly, “notification must not be required for spontaneous assemblies since they do not allow enough time to provide such notice.” (Para. 82) The OSCE Guidelines similarly provide that “Where legislation requires advance notification, the law should explicitly provide for an exception from the requirement where giving advance notice is impracticable. . . . The authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature.” (Para. 4.2)

4. Restriction of assemblies to “specially designated places”

Article 9 of the Draft Law prohibits any peaceful assemblies in places other than “specially designated places,” except “picketing” by an individual, and provides that local authorities shall define the location of such specialised places. (Article 1, para. 2). Individual picketing outside a specially designated area, in turn, is limited to two hours per day and prohibited in a wide range of locations, including adjacent to the residences of the President and First President, “where mass graves are located,” at “railroad, water, air and automobile transport facilities,” etc.

This provision is excessively restrictive. A core feature of the right to freedom of assembly is the right to assemble at a time and in a location where one’s message will be heard. As the Human Rights Committee has held in a case involving Kazakhstan, “[t]he organizers of an assembly generally have the right to choose a location within sight and sound of their target audience.”²² Any restriction on this right must be justified on a case-by-case basis under article 21. The draft UNHRC General Comment further explains that “[w]hile the ‘time, place and manner’ of assemblies may under some circumstances be the subject of legitimate restrictions under article 21, given the expressive nature of assemblies, participants must as far as possible be able to conduct assemblies within ‘sight and sound’ of the target audience.”²³

The draft General Comment further elaborates that “[p]eaceful assemblies may in principle be conducted in all places to which the public has access or should have access by virtue of Article 12 of the ICCPR and other applicable rights, such as public squares and streets”; and that “[a]ny such restrictions should still, as far as possible, allow participants to assemble “within sight and sound” of their target audience”. In particular, “participants in assemblies may not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed, or the general public”. (Paras. 64-65) This rule was specifically mentioned by Human Rights Committee in its finding of a violation of freedom of assembly in *Toregozhina vs. Kazakhstan* (2019).

The OSCE Guidelines confirm that “Public assemblies are held to convey a message to a particular target person, group or organization. Therefore, as a general rule, assemblies should be facilitated within “sight and sound” of their target audience.” (Para. 3.5) Moreover, “[a]ssemblies are as legitimate uses of public space as commercial activity or the movement of vehicular and pedestrian traffic. This must be acknowledged when considering the necessity

²¹ *Popova v. The Russian Federation*, CCPR/C/122/D/2217/2012 (2018).

²² *Suleimenova v. Kazakhstan* (2019), para.9.4; *Toregozhina vs. Kazakhstan* (2019), para. 8.4. See also *Turchenyak et al. v. Belarus*, CCPR/C/108/D/194 (2013), para. 7.4.

²³ Draft UNHRC General Comment, para. 25, see also para. 61. OSCE Guidelines, para. 3.5.

of any restrictions.” (Para. 3.2) The right to peacefully assemble “*appl[ies] to assemblies held in public places that everyone has an equal right to use (including, but not limited to, public parks, squares, streets, roads, avenues, sidewalks, pavements and footpaths).*” (Para. 19) Accordingly,

[p]articipants in peaceful assemblies have as much a claim to use such sites for a reasonable period as anyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public space as the more routine purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic) Other facilities ordinarily accessible to the public that are buildings and structures – such as publicly owned auditoriums, stadiums or buildings – should also be regarded as legitimate sites for public assemblies, and will similarly be protected by the rights to freedom of assembly and expression. (Paras. 20-21)

Any restrictions on the location of assemblies must be the least restrictive means available consistent with these considerations.

5. Discrimination against non-official assemblies

Article 2 Paragraph 5 exempts from the Draft Law’s requirements “*official, cultural, entertainment, recreational and sports events*” and a number of other events that are organized by government authorities themselves. Article 14 denies authorization for a peaceful assembly if such official activities are planned for the same location.

The Human Rights Committee has already indicated that treating government-organized assemblies more favourably than non-governmental assemblies in Kazakhstan constitutes an unacceptable form of discrimination against non-government organized assemblies. In its Views in *Toregozhbina v. Kazakhstan* (2019), the Committee stated that the Republic of Kazakhstan had provided “*no evidence . . . that might justify a distinction between the regulations applicable to events of a “social and political nature” organized by non-governmental organizations, as opposed to State-run or non-political events, contrary to the Covenant’s prohibition on discrimination. (Para. 8.7)*

As the OSCE Guidelines observe, “*[f]reedom of peaceful assembly is to be enjoyed equally by everyone. In regulating freedom of assembly the relevant authorities must not discriminate against any individual or group on any grounds.*” (Para. 2.5) The draft UNHRC General Comment confirms that “*[s]tates must not deal with assemblies in a discriminatory manner.*” (Para. 28) Indeed, such preferential treatment for certain government-sponsored events risks discriminating on the basis of the content of the organizers’ and participants’ common expressive purpose, which would also be contrary to Kazakhstan’s obligations relating to both freedom of assembly and expression. As the OSCE Guidelines and the Committee have observed, “*the regulation of public assemblies should not be based upon the content of the message they seek to communicate.*”²⁴ “*The approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be ‘content neutral’.*”²⁵

6. Prohibition on foreigners, refugees, and stateless persons organizing or participating in assemblies

Articles 1 and 14 of the Draft Law guarantee the right to peaceful assembly only to citizens of Kazakhstan. Article 1 limits the definitions of organizers, participants, and all assemblies to citizens of Kazakhstan. Non-citizen organizers and participants fall entirely outside the protection of the Draft Law. Article 14 paragraph 8 further provides that the authorities shall prohibit any assembly financed by “*foreign citizens, stateless persons and foreign legal entities.*”

²⁴OSCE Guidelines, para. 94.

²⁵ Draft UNHRC General Comment, para. 25, citing OSCE *Guidelines*, para. 3.3.

This restriction is flatly contrary to human rights law. Article 2 paragraph 1 of the ICCPR obligates each State party to respect and ensure the rights in the Covenant to “*all individuals within its territory and subject to its jurisdiction*” (emphasis added). The Human Rights Committee has made clear that “[i]n general, the rights set forth in the Covenant apply to everyone, . . . irrespective of his or her nationality or statelessness.” Specifically, “[a]liens receive the benefit of the right of peaceful assembly and of freedom of association . . .”²⁶ The draft UNHRC General Comment further elaborates that “[i]n addition to its exercise by citizens, the right [to peaceful assembly] may also be exercised by, for example, foreign nationals, including migrant workers, asylum seekers and refugees, as well as stateless persons.”²⁷

The OSCE Guidelines confirm that “[i]nternational human rights law requires that non-nationals receive the benefit of the right of peaceful assembly’. It is important, therefore, that the law extends freedom of peaceful assembly not only to citizens, but that it also includes stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists.” (Para. 55)

7. Excessive obligations on organizers and participants

The Draft Law imposes excessive obligations on the organizers and participants in peaceful assemblies in the name of ensuring “public order,” among others. For example, the Draft Law obligates organizers to “prevent any violations of the legislation of the Republic of Kazakhstan”, “ensure the safety of buildings, structures, small architectural forms, green spaces, and other property,” “create safe conditions for the participants during the peaceful assembly”, “provide medical assistance, fire safety”, etc. The Draft Law accordingly appears to shift to the organizers and participants the responsibilities that human rights law ordinarily places on the state to protect and facilitate the right to peaceful assembly.

The Human Rights Committee repeatedly has recognized that placing excessive and burdensome responsibilities on organizers and participants such as covering the costs of policing or security, or medical assistance or cleaning,²⁸ are generally not compatible with article 21. As the Draft General Comment observes, “[t]hese costs should as a rule be covered by public funds and should not be transferred to the participants.”²⁹

8. Disproportionate sanctions on organizers and participants

Finally, the sanctions imposed under the law are excessive and disproportionate, particularly with respect to organizers of assemblies. The Draft Law places excessive responsibility on organizers for failing to respect the rules established in relation to freedom of assembly. In particular, the Draft Law would amend the Code on Administrative Offences and the Criminal Code to establish fines of approximately \$7,000 USD for organisation of, and fines of \$3,500 USD for participation in, an unauthorised assembly that does not comply with the requirements of the Draft Law and results in “a significant harm”. For other non-compliant peaceful assemblies, organisation and participation is subject to fines of \$700 USD and USD \$350 USD, respectively. Organisers of assemblies face increased liability of approximately \$7,000 USD for repeated violations.

Any sanctions imposed against persons exercising the right to peaceful assembly must satisfy the strict requirements of article 21. In other words, the sanctions must not improperly burden or impair

²⁶ UNHRC, *General Comment No. 15: The Position of Aliens Under the Covenant* (1986), paras. 1, 7.

²⁷ Draft UNHRC General Comment, para. 5, citing CCPR/C/NPL/CO/2, para. 14.

²⁸ CCPR/C/BLR/CO/5 (2018), paras.51-52 (expressing concern at the “stringent conditions for granting authorization, including undertakings to ensure public order and safety and the provision of medical and cleaning services”); *Poliakov v. Belarus*, CCPR/C/111/D/2030/2011 (2014), paras.8.2–8.3.

²⁹ Draft UNHRC General Comment, para. 74, citing ACHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para.102(b).

the freedom of assembly; they must not sanction conduct that is protected by the right, and they must be necessary and proportionate to a legitimate government aim under article 21. Thus, for example, the Human Rights Committee has held that where administrative sanctions are imposed for the failure to notify, this must be justified by the authorities.³⁰ As the Committee elaborates in its draft General Comment, “[w]here criminal or administrative sanctions are used against participants in a peaceful assembly, such sanctions must be proportionate and cannot apply where [the] conduct is protected by the right.” (Para. 76)

A failure to notify the authorities of an assembly . . . should not in itself be used as a basis for dispersing the assembly or arresting the participants or organisers, or the imposition of undue sanctions such as charging them with criminal offences. It also does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants. (Para. 81)

Accordingly,

assembly organizers and participants are obliged to make reasonable efforts to comply with legal requirements, but they should be held accountable [, civilly or criminally,] for their own conduct only. Responsibility of organizers or participants for damage caused by other participants in an assembly should as a general rule not be imposed. If this is done, responsibility must be limited to what they could have foreseen and prevented with reasonable efforts. (Para. 75) (Emphasis added)

The OSCE Guidelines concur in this approach, providing, for example, that “if there are reasonable grounds for non-compliance with the notification requirement, then no liability or sanctions should adhere.” (Para. 110) “Organizers of assemblies should not be held liable for the failure to perform their responsibilities if they have made reasonable efforts to do so. Furthermore, organizers should not be held liable for the actions of participants or third parties, or for unlawful conduct that the organizers did not intend or directly participate in.” (Para. 112)

Conclusion

In sum, as drafted, the proposed legislation includes of number of restrictions on freedom of assembly that are fundamentally contrary to Kazakhstan’s human rights obligations, including (1) excessive notification and approval requirements; (2) excessive authority to ban an assembly; (3) a prohibition on spontaneous assemblies; (4) restriction of assemblies to specific locations; (5) preferential treatment for assemblies organized by the government; (6) a prohibition against foreigners, refugees, stateless persons from organising or participating in assemblies, (7) excessive obligations on organizers and participants; and (8) excessive sanctions for organizers and participants. The timing and process for adopting a law that so fundamentally impacts domestic compliance with core human rights obligations itself raises serious human rights concerns, given the limited ability of civil society organizations and the general public to participate in a robust public debate regarding the law during the quarantine.

In light of these serious human rights concerns, the IBAHRI, the ICJ and the CCPR Centre urge the Senate and/or the President of the Republic of Kazakhstan to halt consideration of the Draft Law, and to seek guidance from the OSCE/ODIHR Panel of Experts on Freedom of Assembly and Association, the Office of UN High Commissioner on Human Rights, and/or the Venice Commission regarding how the current law on freedom of peaceful assembly might be revised consistent with Kazakhstan’s international human rights obligations.

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³⁰ See, e.g., *Popova v. Russian Federation*, paras. 7.4-7.6.

International Bar Association's Human Rights Institute: Established in 1947, the International Bar Association (IBA) is the world's leading organisation of international legal practitioners, bar associations and law societies. The International Bar Association's Human Rights Institute, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide. *See* www.ibanet.org.

International Commission of Jurists: Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession. *See* www.icj.org.

Centre for Civil and Political Rights: The Centre is an independent, non-governmental organisation dedicated to contribute to the implementation of the ICCPR through support to the civil society and through connecting key actors engaged to implement the UN Human Rights Committee recommendations at the national level. *See* [www. http://ccprcentre.org](http://ccprcentre.org).