

FAQ ON FREEDOM OF PEACEFUL ASSEMBLY (HONG KONG)

Q1: What is the right to freedom of peaceful assembly?



The right to freedom of peaceful assembly protects non-violent gatherings for specific purposes, principally expressive purposes. This is an individual right that can also be exercised in a group.

Q2: What is the international standard for right to freedom of peaceful assembly?

According to **Article 21 of the UN International Covenant on Civil and Political Rights ('ICCPR') (1966)**, no restrictions may be placed on the exercise of this right unless necessary in a democratic society and in accordance to the law:

- National Security
- Public Safety
- Public Order
- Protection of Public Health or Morals
- Protection of the Rights and Freedoms of Others



Q3: Why is the right to freedom of peaceful assembly important?

According to **General Comment No. 37 (2020)** by the Human Rights Committee, the right to freedom of peaceful assembly helps to recognize and realize a wide range of other rights, including economic, social, and cultural rights, which is of particular importance to marginalized groups. The full protection of the right to freedom of peaceful assembly is only possible when other, often overlapping rights are protected, such as freedom of expression, freedom of association, and political participation. Failure to respect and ensure the right of peaceful assembly is typically a marker of repression.

Q4: Do people in HK have the right to freedom of peaceful assembly?

Yes! The right to freedom of peaceful assembly is enshrined in the **Basic Law (1997)**, which acts as Hong Kong's constitution. Specifically, in **Article 27 of Chapter III**, it states that "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration." All people in Hong Kong have this right, including citizens, foreign nationals, undocumented migrants, asylum seekers, refugees, and stateless persons. Furthermore, the right to freedom of peaceful assembly applies no matter how big or small the assembly is: a single protestor will enjoy comparable protections.

Q5: What kind of assembly does the right to freedom of peaceful assembly protect?

The right to freedom of peaceful assembly protects all peaceful assemblies, whether indoor or outdoor, public or private, stationary or mobile, and in all forms. Examples of protected assemblies include: demonstrations; protests; meetings; processions; rallies; sit-ins; candlelit vigils; and flash mobs. Importantly, **Article 21 of the ICCPR** also protects online assemblies, hybrid assemblies (both online and offline), and remote participation in such assemblies!

Q6: Do you need permission to hold an assembly?

No! According to **General Comment No. 37**, having to apply for permission undercuts the idea that peaceful assembly is a basic right. As such, spontaneous assemblies are protected too. Failing to notify the authorities of an upcoming assembly does not render participation in the assembly unlawful, and must not be used as a reason for authorities to disperse the assembly, to arrest the participants or organizers, or to impose undue sanctions without justification. As long as the conduct of participants in an assembly is peaceful, participants are still protected even if certain domestic legal requirements pertaining to an assembly have not been met by its organizers or participants.

Q7: Does an assembly in Hong Kong require advance notice and does this comply with international standards?



In Hong Kong, the **Public Order Ordinance (1967)** requires at least seven days' advance notice of intention to hold a public procession and public meeting to be submitted to the Police Commissioner. Since 2020, no such "notice of no objection" has been issued by the Police Commissioner.

Until early 2023, some assemblies received such notices but with new requirements, such as wearing numbered badges during assemblies. The authorities have cited security reasons.

Q8: What are the obligations of governments in relation to the right to freedom of peaceful assembly?

According to **General Comment No. 37**, the lack of notification does not absolve the authorities from the obligation to facilitate the assembly and to protect the participants. Requiring prior notice is only acceptable if this prior notice will assist authorities in facilitating peaceful assembly and in protecting the rights of others. This requirement cannot be misused to stifle peaceful assemblies. Furthermore, notification procedures should be transparent, not unduly bureaucratic, proportionate, and free of charge.

Q9: Are there any restrictions on peaceful assemblies?

Governments are obligated to respect the right to freedom of peaceful assembly and not interfere in peaceful assemblies, while also protecting these assemblies and their participants. This also applies to online assemblies. Governments must protect all peaceful assemblies from interference, undue restrictions, and violations of privacy. (Undue restrictions can also come in the form of restrictions by internet service providers and intermediaries.) According to **General Comment No. 37**, any restrictions on online activities follow the same limitations as that of restrictions on freedom of expression.

Q10: What makes an assembly or a participant violent? Does an assembly lose protection if it is violent?

Any restrictions must meet the requirement of legality, and be both necessary and proportionate. Importantly, the onus is on governments to justify these restrictions. **Article 21 of the ICCPR** lists possible restrictions such as national security, public safety, public order, the protection of public health and morals, and the protection of the rights and freedoms of others. However, restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect. The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it.

Q11: What if the police or authorities use force? Are they allowed to?

The prohibition of a specific assembly can only be a measure of last resort. Where restrictions are necessary, governments should first attempt the least intrusive measures. Rather than imposing prior restraints, governments should also consider allowing an assembly to take place and deciding afterwards whether measures should be taken regarding possible transgressions during the event. Any restrictions on participation in peaceful assemblies should be done on an individual, case-by-case basis, as blanket restrictions are unfairly disproportionate.

Q12: How has the Hong Kong Police Force fared and what does Hong Kong legislation say about the use of force by law enforcement officials?

Importantly, the presumption is in favor of considering all assemblies to be peaceful! According to **General Comment No. 37**, acts of violence refer to participants' use of physical force that is likely to cause injury or death, and serious damage to property. Therefore, mere pushing and shoving, or disrupting foot and vehicle traffic, does not count as violence. Carrying objects capable of committing or defending against violence is not necessarily an act of violence. This must be reviewed on a case-by-case basis, taking into consideration intent, legal regulations, local customs, and the risk posed by such objects.

Q13: What if the police or authorities use force? Are they allowed to?

Violence against participants in a peaceful assembly by the authorities, or by agents provocateurs acting on their behalf, does not render the assembly non-peaceful. The same is true for violence by counter demonstrators and other members of public who are not participating in the assembly. Isolated acts of violence does not make the entire assembly non-peaceful: violent actions must be widespread among the participants. Specific participants may only be considered violent if authorities can show that these participants are inciting violence, planning to act upon violent intentions, or are about to cause violence.

Q14: What if the police or authorities use force? Are they allowed to?

Law enforcement officials may only use minimum force necessary for legitimate law enforcement purposes: once the need for any use of force has passed, no further resort to force is permissible. The use of force must be proportionate: domestic law must not grant officials largely unrestricted powers or allow use of force against participants in an assembly on a wanton, excessive or discriminatory basis.

Q15: How has the Hong Kong Police Force fared and what does Hong Kong legislation say about the use of force by law enforcement officials?

Law enforcement officials are obliged to first exhaust non-violent methods and give a prior warning prior to using violent means, unless doing either would be ineffective. Any use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination applicable to **Articles 6 and 7 of the ICCPR**, and those using force must be accountable for each use of force. It is essential that domestic legislation are in line with international legal standards outlined in the **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)** and the **United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020)**.

Q16: How has the Hong Kong Police Force fared and what does Hong Kong legislation say about the use of force by law enforcement officials?

The excessive use of force by Hong Kong law enforcement officials has been a topic of concern in recent years especially during the Anti-ELAB movement protests in 2019. According to the **Public Order Ordinance**, Hong Kong police force may use force to prevent, stop, or disperse a public assembly, and apprehend any suspect who resists or evades arrest. The **Police Force Ordinance** specifically adds: "If any person who may lawfully be apprehended ... forcibly resists the endeavour to arrest him or attempts to evade the arrest, a police officer or other person may use all means necessary to effect the arrest."

Q17: How has the Hong Kong Police Force fared and what does Hong Kong legislation say about the use of force by law enforcement officials?

In August 2019, the Spokesperson for the UN High Commissioner for Human Rights issued a statement calling upon the Hong Kong government to investigate incidents involving excessive use of force, as well as to modify and ensure authorities comply with the rules of engagement.

Q18: How has the Hong Kong Police Force fared and what does Hong Kong legislation say about the use of force by law enforcement officials?

Alarmingly, on 30 September 2019, the Hong Kong Police Force's use of force guidelines were amended to give officers even more discretion over the use of force, while requirements about accountability over the use of force had been removed. This same guidelines also advises police officers to consider the use of tear gas and pepper spray in cases of "Defensive Resistance" and rubber bullets, water cannons, lachrymatory liquid, and bean bags in cases of "Active Aggression." These do not comply with international legal standards outlined in the **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)** and the **United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020)**.

