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**Statement on the General Comment on Article 21 of the International Covenant on Civil and Political Rights - MARCH 2019**

**Written contribution**

*Article 21. The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.*

We are pleased to write our reflections, demands and analysis on a subject as complex as the right of peaceful assembly. Complex because it crosses a lot of fundamental rights and obligations for democratic societies and States.

Before developing our position, we want to clarify that when we talk about the defense of the right of peaceful assembly, we always refer to those mobilizations -in public & private spaces- that have to do with claims from civil society about the lack of basic rights for a decent life.

Moreover, we want to highlight that after three years of the approval of the package of the so-called gag laws in Spain (Citizen Security Law, Reform of the Criminal Code & Anti-Terrorist Law), the situation we are living is, more than ever, a serious regression of civil and political rights. Citizen Security Law does not comply with international minimum quality standards on the rights to freedom of peaceful assembly and association.

Within the framework of our work promoting the political participation of an active and organized society in Spain and the creation of a national platform to accompany human rights defenders, we detected that:

* It is necessary to pay attention to the **connotations that national security and public security, written in article 21, are taking**. In Spain, the normative frameworks that regulate the containment of the peaceful assemblies are based, at present, on a mainly sanctioning orientation, which values the protest from the point of view of national security and public order instead of conceiving it as a right that must be protected. Holding peaceful assemblies is a fundamental component to influence public policies, to exercise political participation. Democracy is much more than exercising the right to vote. Currently**, our national laws are writing freedom and rights versus security and public order**. Therefore, instead of actually taking into consideration those voices that are critical with the current state of affairs, people who protest are criminalised and repressed through sanctions that vary from administrative fines -what is called low-intensity repression- to actual imprisonment or arrest. The gag laws in Spain provide a wide and generic legal framework, which bring about a wide discretion in the application of such laws. Moreover, the present situation prioritizes the presumption of veracity of the Security Forces over the presumption of innocence of citizens who engage in protest. The ideology behind it consists in **prioritizing citizen security as a legal good at any cost instead of prioritizing other rights when, on the contrary, in accordance with international standards, the concept of security or public order should be interpreted in a limited way and not in an extensive one**. The law seeks to limit disproportionately and without justification, and even sometimes prevent, the effective exercise of the right to peaceful assembly, and therefore protest is seen as a violation of the law instead of a democratic exercise. We call for a re-emphasis on the concept of Human Security over the idea of Homeland Security.
* An Article 21 that would be properly adapted to the reality of the 21st century in the field of human rights should clearly have a **holistic view of human rights and regulate the existing obligations regarding the need to understand that security is a right that the State it must protect - not an argument to limit existing rights**; and in terms of the demand that every state has to strengthen the security of rights, state must focus efforts on rights such us civil and political, economic, social and cultural.
* Article 21 has a direct relationship with article 19 (Freedom of expression and access to information), article 20 (association); and, of course, article 22 (political participation). Our understanding of these rights is largely inspired by the studies of the Argentinian professor of Constitutional Law and Doctor of Law, Roberto Gargarella. **The right to peaceful assembly, the right of association, freedom of expression and the right to information constitute the well-known Right to protest and they are connected with basic democratic features such as plurality and citizens' control over the government as well as the protection of minorities and the warranty that all citizens are able to access the public debate no matter what resources they have**. A fundamental right to preserve the conquered rights and achieve new advances in the defense of a democratic society. Therefore, yes, for us the right of peaceful assembly should be understood as a fundamental right linked and framed in the Right to protest.
* **Violence of a group of people in a peaceful assembly cannot be the excuse to limit a fundamental right or to exercise the disproportionate use of force by the State Security Forces.** The measures of containment and control of demonstrations must always be carried out prevailing the rights to physical integrity and non-discrimination. In this line, we want to point out the **necessity to regulate demonstration control weapons paying attention to the harmful power of each material**, as well as to the recommendations of human rights organizations that have long demanded specific investigations and purification of responsibilities in relation to complaints and injuries occurred in contexts of protest. A first obstacle to the accountability is the lack of identification of the agents in this type of operations. Indeed, over the years the riot police in Spain have acted countless times without complying with the regulations that oblige them to be correctly identified
* It is also important to highlight that the right of peaceful assembly, when framed inside the right of protest, inevitably involves third parties, since it takes place in the public space, and it affects others’ routines and daily-life activities. This injerence of the collective action into other citizens’ activities is often used as a means to criminalize protest, because the actions brought about by protesters might collide with the rights of others. Nevertheless, protests by definition carry on a “collective defiance”, which might affect third parties, and this should not entirely delegitimize the action, as rights are not absolute. Instead, what should be dealt with is the **regulation of such collision of rights in a way that would not undermine the right to protest or those who have no other means to make their voices heard**.