Speaker: Simon Crowther

A**mnesty International's Comments at the Initial Half Day of Discussion on General Comment 37**

Mr Chair, members of the committee,

Amnesty International wishes to thank the Committee for the opportunity to address some of the main issues pertaining to the right of peaceful assembly, and thank the Rapporteur for the excellent and comprehensive concept note.

Due to time constraints, my intervention will primarily address the following issues:

- The Internet
- Use of force
- States of emergency

The internet

We are mindful of the extent to which modern association and expression are facilitated by the internet, and the potential importance of the internet both as a facilitator of physical assembly, and as a venue for assembly within its own right.

The ability of people to access communication technologies in a secure and private manner has become vital for the organization and conduct of peaceful assemblies and is an essential tool for effective human rights work.

Internet shutdowns can have a notable chilling effect on the right of peaceful assembly, as they particularly undermine the ability of organizers to communicate and publicise the event, and to mobilize a large group of people in a prompt and effective manner

The General Comment needs to be drafted with the ever-evolving nature of online assembly in mind, and in such a way that will 'future-proof' its application. This is particularly important in light of the increasing tendancy of governments to use internet shutdowns as a means of stifling the right of peaceful assembly.

Excessive use of force

Mr chair, state authorities' use of force to disperse protestors is also an area we would like to see addressed in the general comment. Too often we are witnessing a failure on the part of

states to respect their duty to facilitate peaceful assembly, to open dialogue with protestors and to de-escalate tensions. The general comment should require police to take all reasonable and appropriate measures to enable people to exercise the right of peaceful assembly without undue interference and without intimidating those who wish to participate in the assembly.

The use of water cannon, tear gas and rubber bullets are of particular concern to us, and the general comment must be clear on the very limited circumstances in which these weapons can be lawfully used.

States of emergency

Finally, we wish to address threats to the right of peaceful assembly in the context of states of emergency.

As we have seen in numerous circumstances, powers granted under states of emergency can be misused to violate the right to assemble for reasons unrelated to the state of emergency. Just a few examples include powers granted in the name of combatting terrorism being used to stifle

labor union events, environmental protests and workers protesting their working conditions. **T**he General Comment should reiterate this committee's holding that restrictions on the right of peaceful assembly under the terms of article 21 of the Covenant should generally be sufficient in situations of emergency, and therefore derogations should not generally be justified.

We would be happy to develop further on these and other areas in our submission. I thank you for your attention.

ORAL STATEMENT

General Comment No. 37 on Article 21 (the Right of Peaceful Assembly)

Delivered by Barbora Bukovska, Senior Director for Law and Policy, ARTICLE 19

Thank you Chairperson, Rapporteur,

ARTICLE 19 welcomes the opportunity to contribute to the Committee's deliberations on General Comment No. 37. We very much welcome the proposals outlined in the Concept Note shared by the Committee so far and we are hoping this will lead to a progressive and comprehensive General Comment.

As a freedom of expression organisation, we would like to highlight following three key issues for the consideration of the Committee:

First, in our experience, the term "peaceful", which is ambiguous from a legal perspective, is prone to narrow interpretation by States who wish to limit the scope of the right.

Therefore, we recommend that the Committee interprets the term "peaceful" broadly and excludes only those instances in which there is clear and convincing evidence of intent by protesters to engage in violence against a person or property, and a high probability that they will do so. These should include the use of self-defence (of oneself or another) by protesters against unlawful acts, but the form of self-defence should be no more than is reasonably necessary in the circumstances, as the individual genuinely believed them to be. The assessment of whether protest is peaceful should take into account the fact that isolated or sporadic violence or other unlawful acts committed by others do not deprive individuals of the right to protection, as long as they remain peaceful in their own intentions or behaviour.

Importantly, the General Comment should therefore acknowledge that whenever a protest ended in violence, it was due to the state's failure to effectively facilitate peaceful protest, prevent violence and engage in conflict resolution with those who were likely or intending to engage in violence.

Second, we believe that the Committee should define the concept "assembly" broadly, to reflect the increasingly creative ways in which people collectively exercise their rights. We suggest that an assembly should mean any collective act of expression between two or more people with proximate unity of purpose, time, and place. It should state that assemblies may take place in any location, physical or virtual, whether that space is public, private, or quasi-public (i.e. privately owned, but functionally public). Non-violent direct action,

and civil disobedience should fall within the protective scope of Article 21 of the ICCPR, and any restrictions on them should be justified in accordance with the limitations clause therein.

We also urge the Committee to provide more specific guidance to States on the meaning of "public order" for the purpose of limiting rights, and address the abuse of civil lawsuits through strategic litigation against public participation (SLAPPs).

Third, we believe that General Comment is an opportunity to consolidate normative advances in understanding the application of Article 21 online and clarify intersections of Article 21 with the right to freedom of expression and the right to privacy. We urge the Committee to make clear that everyone should, by default, be allowed to freely use digital technologies in peaceful assemblies. In particular, the General Comment should mandate that

- "Internet shutdowns" or "kill switches", measures to intentionally prevent or disrupt Internet access during assemblies, re always a disproportionate interference with human rights and can never be justified;

- Limitations to online anonymity and encryption for assembly purposes should be prohibited. We believe that the ability to conceal one's identity can have an expressive purpose and should be protected. The Committee should consider the particular importance of encryption and anonymity tools for individuals and groups that face discrimination, as well as those operating in environments where organising or engaging in assemblies carries with it risks of surveillance by the government or private actors both online and offline.

- Use of surveillance techniques for the indiscriminate and untargeted surveillance of persons exercising their rights of peaceful assembly should be prohibited.

- The Comment should also recognise that assemblies may take place online with the possibility of internet users' rights taking precedence over the property interests of platform or infrastructure owners and also recognize the human rights responsibilities of business enterprises vis-à-vis the right of peaceful assembly, including as recognised under the Ruggie Principles on Business and Human Rights to respect the human rights.

We urge the Committee to consider further issues outlined in our written submission.

Thank you.

Statement of the City of Amsterdam 20-03-2019

- We meet at a time of great tension and division between politicians, religions, state actors and the rise of new protest-movements.
- Therefore I am thankful that the Human Rights Committee hosts this meeting and we as representatives of the Mayor of Amsterdam can attend this timely discussion.
- On behalf of the Mayor of Amsterdam we want to thank you for this opportunity to speak freely to you about what we find important principles concerning the freedom of assembly.
- Let me be clear: In the Netherlands the central government has no say on how the local authorities deal with demonstrations. In the Netherlands the Mayor is responsible for safeguarding the freedom of assembly and is the "commander in chief" for maintaining public order. The local prosecutor is responsible to enforce criminal law, when necessary also within an assembly. Together with the police they form a deciding local body that deals with assemblies.
- In Amsterdam we have around 1000 demonstrations a year and by every single one of them we live by and act by four key principles. These are:
    1. **The purpose of the state is safeguarding freedom.** This quote of Baruch Spinoza – who lived in Amsterdam in the 17th century - is the main principle of the city of Amsterdam in this regard. This means we need to ensure the freedom of assembly because it is simply the duty within a true democracy to do so.
    2. **The sight and sound principle:** The European Court on Human rights has determined that demonstrations should be allowed at places where the demonstrators can be seen and heard.
    3. **Hands off the content:** No judgements should be made with regard to the message of a demonstration. We must not only accept that people think and say awful things, we should actively protect their rights to do so, within the boundaries of the Law.
    4. **Protection:** Our democracy is strong precisely because it allows opposing and even provocative and noisy expressions. This is something to protect. At the same time, based on the principle of protection, boundaries must be enforced as directly and as visibly as possible. Those who are entitled to protection should be protected. Those who violate rights should know that they have crossed a boundary. That boundary is the law, and no demonstrator is above the law.
- These guiding principles for the city of Amsterdam are described in a handbook we developed for local governments dealing with demonstrations. This handbook will be translated into English. When it is finalised I would be happy to share it with those interested. Thank you.

DISCOURS DES ÉTUDIANTS DU MASTER 2 DROITS DE L'HOMME ET DROIT HUMANITAIRE - PARIS 2 PANTHEON ASSAS

SOUS LA DIRECTION DU PROFESSEUR OLIVIER DE FROUVILLE - CRDH

Merci Monsieur le président.

Monsieur le président, Mesdames et Messieurs les rapporteurs,
Mesdames et Messieurs,

Dans le cadre des travaux du Centre de Recherche sur les Droits de l'Homme et le Droit Humanitaire de l'Université Panthéon-Assas, et sous la direction de Monsieur le professeur Olivier de Frouville, mes collègues Laura Rios, Mathilde Prévost, Romain Aïdaoui et moi-même souhaitions contribuer à cette demi-journée de discussion générale par une analyse des enjeux contemporains du droit de réunion pacifique à la lumière des débats qui ont lieu aujourd'hui en France.

Nous avons identifié deux aspects centraux de l'exercice de ce droit qui méritent selon nous d'être appréhendés par le Comité.

La première question qu'il nous semble opportun d'aborder concerne le régime de déclaration préalable auquel peut être subordonné l'exercice du droit de réunion pacifique.

Tout d'abord, il est important de distinguer le régime de notification préalable du régime d'autorisation, notamment lorsque ce dernier existe *de facto*. Les Etats devraient par ailleurs offrir des garanties suffisantes telles que des recours effectifs qui permettent aux personnes visées par une décision de restriction de leur droit de réunion pacifique d'en faire contrôler la légalité au fond et la proportionnalité entre le but recherché et les moyens employés.

En outre, les sanctions pénales qui peuvent exister en cas de non-respect de l'obligation de notification préalable ne doivent pas avoir un effet dissuasif ou intimidant. Une solution plus respectueuse du droit de réunion pacifique serait toutefois de ne pas prévoir de telles sanctions.

Il est également nécessaire de s'assurer que les manifestations spontanées ne puissent pas être restreintes sur le seul fondement de l'absence de notification préalable, particulièrement lorsqu'elles répondent à un événement inattendu.

En cas de circonstances exceptionnelles, telles qu'envisagées dans l'article 4 du Pacte, les Etats doivent respecter, protéger et garantir le droit à la liberté de réunion pacifique et s'abstenir d'imposer des restrictions au droit de réunion pacifique spontanée, par des moyens et méthodes qui vont au-delà de ce qui est strictement requis par la situation.

La seconde question qu'il nous paraît important d'aborder a trait aux restrictions qui peuvent être apportées au droit de réunion pacifique à titre préventif.

La pleine jouissance du droit de réunion pacifique suppose que les restrictions qui peuvent lui être apportées dans un but légitime tel que celui de préserver l'ordre public reposent sur des critères précis. L'examen de la gravité que représente la menace posée par la participation d'une personne à une manifestation doit être encadré par des règles précises.

Les mesures d'interdiction de manifestation qui peuvent être prononcées à l'égard des personnes doivent également être proportionnées dans leurs effets. Elles ne doivent pas être générales et porter sur l'ensemble du territoire national, et elles ne doivent pas demeurer en vigueur pour une durée excessive.

Les limitations qui peuvent être apportées au droit de réunion pacifique doivent pouvoir être soumises au contrôle d'un juge. La personne visée par une interdiction de manifester doit en être avertie suffisamment en amont pour pouvoir contester cette décision en justice avant que la manifestation n'ait lieu. Enfin, le juge chargé de recevoir cette requête doit disposer des moyens suffisants pour se prononcer rapidement afin de fournir une réparation adéquate au justiciable.

Merci à tous pour votre attention.

EELC EQUAL EDUCATION LAW CENTRE

20 March 2019

STATEMENT DURING ORAL INTERVENTION:

UN HUMAN RIGHTS COMMITTEE HALF DAY GENERAL DISCUSSION ON ARTICLE 21 of ICCPR

Palais Wilson, Geneva.

Mr Chairperson, thank you for this opportunity.

My name is **Mbekezeli Benjamin** and I am with my colleague, **Mr Sipho Mzakwe**. We are from the Equal Education Law Centre, a specialist education law clinic based in Cape Town, South Africa.

The purpose of our submission to this Committee is to highlight the importance of the right to peaceful assembly for children. We therefore make recommendations urging the Committee to specifically recognise children when preparing the draft General Comment.

In our submission we recommend that the draft General Comment should recognise and reiterate that children are bearers of the right to peaceful assembly. This right is inextricably linked to the right of children to freedom of expression and to participation in the social and political life of society. We recommend further that the draft General Comment should emphasise State Parties' negative and positive obligations in relation to the right to peaceful assembly, which includes the adoption of special measures of protection in relation to children. This entails State Parties taking into account the rights and specific interests of children when developing laws, policies and administrative measures regulating and giving effect to the right to peaceful assembly.

In relation to prior notification requirements, we recommend in that the draft General Comment specifically state that the purpose of any prior notification requirement should be to facilitate and enable the exercise of the right to protest. The mere failure to provide prior notification of an assembly should not result in sanctions or

penalty, which has particularly restrictive effects on children. Furthermore, we recommend that State Parties should be encouraged to provide for accessible methods of prior notification, specifically considering the needs and best interests of children seeking to exercise their right to protest.

Finally, we recommend that the draft General Comment advise State Parties to avoid criminalisation of peaceful assemblies. It should also emphasise that criminalisation may only be used as a measure of last resort in relation to children.

We will be pleased to take questions from the Committee.

INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANISATIONS

ORAL STATEMENT ON THE PREPARATION OF A GENERAL COMMENT ON ARTICLE 21 (RIGHT OF PEACEFUL ASSEMBLY) PREPARED BY THE INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS (INCLO)

Submitted to:	The United Nations Human Rights Committee C/O Rapporteur Christof Heyns E-mail: ccpr@ohchr.org
Submitted by:	International Network of Civil Liberties Organizations (INCLO) C/O Michael Power, ALT Advisory, Adviser to INCLO E-mail: michael@altadvisory.africa
Re:	Oral statement on the preparation of a General Comment on Article 21 (Right of Peaceful Assembly)
Date:	19 March 2019
Presentation date:	20 March 2019, United Nations Human Rights Committee, Palais Wilson, Geneva

Visit inclo.net

RAPPORTEUR HEYNS, MEMBERS OF THE HUMAN RIGHTS COMMITTEE, STATE AND CIVIL SOCIETY REPRESENTATIVES, COLLEAGUES:

1. The International Network of Civil Liberties Organizations ("**INCLO**") welcomes the opportunity to present this oral statement and to engage in this timely General Discussion on the preparation of a General Comment on Article 21 of the International Covenant on Civil and Political Rights. INCLO has filed a comprehensive written contribution and a video contribution to assist the Committee during this process.

2. For the purposes of this oral statement, we outline 12 guiding principles which we suggest should inform the preparation of the General Comment and which are documented on pages 6-8 of INCLO's written contribution and in its most recent research report, *Defending Dissent: Towards State Practices that Protect and Promote the Rights to Protest*:[1]

3. ***Before an assembly***:

   3.1. The role of **legislation, leadership and policing culture** in protecting and promoting the right to assembly should be acknowledged. States must adopt legislation and policies that commit the state and its policing institutions to safeguarding the right to assembly.[2]

   3.2. The principles of **non-discrimination and equality** must be respected. Police officers should receive comprehensive and ongoing instruction and training on structural inequality and implicit bias.[3] **Police training** should prepare officers to exercise good judgment and to engage in balanced decision-making.[4]

   3.3. If **notification systems** are in place, they should only be used to enable facilitation of assemblies. Where in place, notification processes should be simple, quick, widely accessible, and free.[5]

4. ***During an assembly*:**

   4.1. Policing institutions should adopt **de-escalation and non-escalation techniques**, which require designing operations with an understanding of crowd dynamics and the likely impact of police behaviour on protesters and bystanders.[6] In addition, **specialised dialogue officials** should be enlisted to ensure that genuine and transparent engagement occurs between officials and protesters.[7]

---

[1] *Defending Dissent: Towards State Practices that Protect and Promote the Rights to Protest* (2018), prepared in partnership with the International Human Rights Clinic at the Law School of the University of Chicago ("***Defending Dissent***") (accessible here).
[2] *Defending Dissent*, page 7.
[3] *Defending Dissent*, page 8.
[4] *Defending Dissent*, page 8.
[5] *Defending Dissent*, page 8.
[6] *Defending Dissent*, page 9.
[7] *Defending Dissent*, page 10.

4.2. **Decisions to use force**, including the use of less-lethal weapons, must always be evaluated for their consequences and compliance with international law principles, including accountability and non-discrimination.[8] It should also be borne in mind that, increasingly, **surveillance practices** can have a chilling effect on protest,[9] infringe privacy rights, and violate associated human rights.[10]

5. ***After an assembly*:**

5.1. Good practices require policing institutions to engage in **data tracking and reporting**.[11] Further, well-resourced and staffed **independent oversight mechanisms** need to be established, in addition to accessible and effective independent judicial oversight bodies.[12] Additionally, policing institutions should also establish policies and procedures for effective **internal investigations**.[13]

5.2. Lastly, **transparency** is essential. Policies for training, use of force manuals, and reports and statistics on police practices should be made publicly available and easily accessible.[14]

6. In closing, INCLO remains deeply concerned by the manner in which assemblies are presently policed in various jurisdictions around the world and posits that:

> "If freedom of expression is the grievance system of democracies, the right to protest and peaceful assembly is democracy's megaphone. It is the tool of the poor and the marginalized – those who do not have ready access to the levers of power and influence, those who need to take to the streets to make their voices heard."[15]

7. We are thankful for the opportunity to present this oral statement and look forward to engaging in the General Discussion.

INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS
19 MARCH 2019

ENDS.

[8] *Defending Dissent*, page 10.
[9] See the INCLO Joint Submission to the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association in regards to his thematic report on the rights to freedom of peaceful assembly and of association in the digital age (March 2019).
[10] *Defending Dissent*, page 11.
[11] *Defending Dissent*, page 11.
[12] *Defending Dissent*, page 12.
[13] *Defending Dissent*, page 13.
[14] *Defending Dissent*, page 13.
[15] *Take Back the Streets*, page 1.

NGO MONITOR
Making NGOs Accountable

10 Yad Harutzim St.
Jerusalem, Israel 9342148
Phone: +972-2-566-1020
Fax: +972-77-511-7030
mail@ngo-monitor.org
www.ngo-monitor.org

Statement of the Institute for NGO Research
to the Human Rights Committee on Article 21
March 20, 2019
To be Delivered by Anne Herzberg

We thank the Committee and the Special Rapporteur for their efforts in seeking to clarify the content of Article 21 of the ICCPR and for giving us the opportunity to speak here today.

The right to Peaceful Assembly is one of the most fundamental rights to ensure a vibrant, free, and democratic society. Governments must take all necessary measures so that this right is secure both on paper and in practice.

While almost all of the submissions relating to this effort address specifically how governments must protect this right and what constitutes necessary measures, we would like to focus on the word "peaceful" and what is the scope of this concept.

Far too often, not enough attention is given to this question.

The OSCE Guidelines on Peaceful Assembly and the Johannesburg Principles offer some guidance on how governments can draw the line between protected and prohibited activity.

However, while these are good starting points, we urge the Committee to put content to these generalizations and provide concrete examples.

We believe that activities such as vandalism, looting, setting fires, and other destruction of public and private property cannot be considered "peaceful" assembly.

We were highly disappointed that in its report, the Commission of Inquiry on the Gaza Riots found that the mass burning of tires, which is considered by the WHO to create an extreme threat to human health and the environment, to be peaceful.

We believe that context is also critical to determining whether assembly can be considered peaceful.

Again the context of Gaza is instructive. Israel and Palestinian armed groups are engaged in an on-going armed conflict with flare-ups of violence causing much suffering on both sides of the border. Yet, in the midst of this highly volatile situation, the Hamas authorities and other armed groups decided to organize weekly protests with the stated aim, as the COI acknowledged, of having 200,000 demonstrators march and break through the border fence, infiltrate several kilometers into Israel, and establish a city. Again, the COI, shockingly described this manifest hostile intent and activity to be "peaceful".

NGO MONITOR
Making NGOs Accountable

10 Yad Harutzim St.
Jerusalem, Israel 9342148
Phone: +972-2-566-1020
Fax: +972-77-511-7030
mail@ngo-monitor.org
www.ngo-monitor.org

In no way, can amassing hundreds of thousands of individuals directly on a hostile border, destroying border fencing, and infiltrating the sovereign territory of another country be considered a form of peaceful assembly.

Finally, the Committee must also take into account the rights of children. In the ICCPR and the CRC, children are granted the right to peaceful assembly. However, these instruments require that children will not be subject to incitement or violence. Again, it is egregious that the Gaza COI was silent on the recruitment and use of Palestinian children to burn tires, sabotage the fence, and participate in other violent activities under cover of a "peaceful" protest.

In conclusion, we hope that the Committee will seriously undertake an examination of what constitutes "peaceful" assembly and provide useful definitions and guidance so that states parties can ensure they are doing their utmost to upholding the right of those assembling, while also protecting the rights of others.

Thank you.

Human Rights Committee

General Discussion in preparation for a General Comment on Article 21

20 March 2019, Geneva

Loredana Carta, International Trade Union Confederation

I am here on behalf of the International Trade Union Confederation. We represent more than 207 million workers.

The right of all workers to form trade unions in order to represent their rights and interests is protected under article 22 of the International Covenant on Civil and Political Rights. At the same time, trade union activity typically involves assemblies of workers, not only in the workplace but also in the public domain. Such activities range from internal meetings necessary for the democratic functioning of trade unions to public protests. In this regard, the right to strike goes beyond the mere withdrawal of labour and encompasses different forms of assemblies, such as pickets, sit-ins and protest strikes, including marches and demonstrations. This clearly shows how inextricably linked the right to freedom of association and the right to peaceful assembly are.

Attacks on fundamental rights are increasing globally. Rising authoritarianism has not only led to the criminalisation of protests and strikes. Protesters are also met with unprecedented levels of violence and brutality and police forces frequently resort to serious physical assault on workers, including by using firearms against them. Furthermore, in many countries, alleged threats to national security have been abused to impose outright bans on protests and strikes.

Exorbitant damage claims for legal and peaceful strikes and protests; dismissal and discrimination; and the use of private security and hired thugs to intimidate workers are just a few examples of how private actors are involved in hindering the exercise of the right to freedom of assembly. This is exacerbated by the fact that many workers still have no access to adequate and effective remedy.

The right to peaceful assembly is central to enabling workers to voice their interests and legitimate demands in order to achieve improvements in their conditions and participate in decision-making directly affecting their lives.

Therefore, we emphasise the need to ensure a conducive and permissive environment for the enjoyment and exercise of the right to peaceful assembly. To that end, undue legislative and administrative restrictions, such as prior authorisation, should not be imposed. A general presumption in favour of the right to freedom of assembly must prevail and a declaration of a state of emergency must always be scrutinised in this light.

States must also take positive measures to fulfill the right to peaceful assembly and protect against violations by private actors, including by taking steps to prevent, punish and provide redress for abuses through effective laws and complaint mechanisms.

Thank you.

International Service for Human Rights (ISHR)
Speaker : Vincent Ploton

Mr. President,

My name is Vincent Ploton and I am speaking on behalf of the International Service for Human Rights, an independent NGO working for the protection of human rights defenders.

The right to freedom of peaceful assembly is an essential right for human rights defenders. The right enables them to voice their opinions, rally popular support and move for positive social change. We are seeing too often now defenders being vilified, harassed and even killed for exercising their right to peaceful assembly. It is a horrifying trend that needs to stop.

Our submission to this half-day, which draws on substantial inputs from DLA Piper, is a compilation of jurisprudence from regional, national and international bodies. It sets out areas where laws protect the right and State attempts to limit that right.

In the submission we also highlight the importance of the UN Declaration on Human Rights Defenders, which recognizes the right to freedom of peaceful assembly under Article 5.

However, there needs to be implementation on the national level of the rights contained in the ICCPR and the Declaration. To help do this, in 2016 ISHR developed a Model Law for the recognition and protection of human rights defenders.

This Model Law was developed in consultation with over 500 human rights defenders from every region and settled and adopted by 28 of the world's leading human rights experts and jurists. The Model Law sets out ways to implement human rights, such as the right to freedom of peaceful assembly, at the national level.

Now, we are seeing governments use this Model Law to create national legislation on protecting defenders' rights, including in recent years in countries such as Côte d'Ivoire, Mali and Burkina Faso.

This Model Law is only one step to ensuring full protection of the right to peaceful assembly. We need the Human Rights Committee to protect the right to freedom of peaceful assembly and to ensure that the right is as broad as possible. The Human Rights Committee also needs to effectively address those governments that are cracking down on the right, whether through restrictive legislation or violence.

It is imperative to protect the right to freedom of peaceful assembly, and the Human Rights Committee must do its part for its protection. The lives of defenders and those they advocate for depends on it.

Thank you.

Speech of Tatiana Chernikova (Human Rights Center "Memorial" and OVD-Info)

Thank you, Chair; Dear colleagues,

In our submissions to the Human Rights Committee Human Rights Center "Memorial" and OVD-Info tried to discuss different aspects of the freedom of assembly. However, in my today's speech – due to time limitations – I will focus on two key points: solo demonstrations and the right to call for participation in demonstrations.

First issue I would like to cover speak is solo demonstrations. We consider that if that gathering takes place in public and entails an appeal to the public opinion it should be considered under the right to freedom of assembly, even if only one person participates. On this point we take issue with the Committee's approach and with European Court of Human Rights, both of which treat solo demonstrations only as the exercise of freedom of expression. Three arguments in our support are the following.

First, the goal of solo demonstrations is to inform others about some ideas and to convince them to act in favor of these ideas, so the transformation of a solo demonstration into a spontaneous assembly is often intended. So there can be no clear line of distinction between a solo demonstration and an assembly with multiple participants.

Second, solo demonstrations are often seen by the authorities as assemblies when several persons join it or when several solo demonstrations on the same issue take place in different places. When solo demonstrators are arrested they are charged not with the contents of their slogans, but with violations of the rules related to the public assembly.

Third, Human Rights Committee is currently considering the dispersal of solo demonstrations as a matter of interference with freedom of speech. However, we would like to underline that a person not only has a right to express an opinion but should have the right to express it in the street or in other public spaces. It is particularly important because in these places the person is attempting to reach out to wider public and can find new supporters. The statement made in the street can thus be a stronger action than an online petition or a statement made on the Internet, within one's "social bubble".

My second issue concerns the right to inform general public about the assemblies and about the ideas raised thereby. We consider that this is an important part of the right to freedom of assembly as the goal of a gathering is to share information and ideas with other people and with the Government. We would find helpful if the following points are included in the General Comment on Article 21:

- The organizers and participants to a gathering should have the right to invite people to the gathering before the formal notification of the authorities, especially where deadlines for notifications are short.
- The authorities should not censor the posters and slogans of the demonstrators it they do not call for violence or discrimination. It is not for the authorities to decide whether the posters and slogans correspond to the subject matter of an assembly.
- The authorities should not limit the demonstrations to the places where they can be difficultly seen by other people.
- The authorities should not punish individuals for publication of the information about the non authorized assemblies, where there is, again, no call for violence and/or discrimination.

Thank you for your attention.

The right to peaceful assembly

Issues for consideration by the Human Rights Committee

Oral statement to the Human Rights Committee in the context of the preparation for a General Comment on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights

20 March 2019

Statement delivered by Khadidja Nemar, Chief Legal Adviser at MENA Rights Group

Esteemed members of the Committee and the secretariat, we thank you for this opportunity.

MENA Rights Group's submission analyses laws and practices of countries in the Middle-east and North Africa region, which remain characterised by state security-oriented treatment of fundamental freedoms. I will only raise here three illustrative issues of how this affect freedom of peaceful assembly.

First, sensitive contexts show the importance of adopting in the commentary an approach that is most favourable to right-holders. This entails reaffirming and clarifying the state's obligations to respect, protect and fulfil but also to recognize an overall duty to facilitate that can be derived from the performative nature of peaceful assembly. It may imply that states should adopt a notification system that is nonburdensome, voluntary and for the sole purpose of protecting the assembly. As such, the *likelihood* that an assembly might lead to violence should not be considered as a basis to restrict the right to assemble but rather as an element triggering an obligation for the state to facilitate the assembly by protecting its peacefulness. A duty to facilitate can also be read in conjunction with the obligation of non-discrimination which require a state to take positive steps to facilitate the enjoyment of the right to peaceful assembly of certain vulnerable or marginalised groups.

Secondly, we observe an overreliance on derogations to article 21 in emergencies but also a systematic use of broad limitations integrated in ordinary laws which remain hidden, permanent and unchecked, creating de *facto* emergencies. Such dispositions are usually enshrined in counter-terrorism laws but can also be found, for example, in laws regulating the protection of public facilities and infrastructures.

My third and last point concerns the means of dispersal. It is important to highlight that any "less-lethal" weapon remain nonetheless lethal when used with the intent to harm or without any precaution to avoid harm. Therefore, the use of less-lethal weapons should not constitute in itself a guarantee against violations of article 21, but also 6 and 7 of the covenants. Lastly, the use of special forces with hybrid military-civilian status which are neither trained in law enforcement standards, nor subjected to civilian and democratic control, should be considered in itself as a form of disproportionate use of force.

MENA Rights Group is a Geneva-based legal advocacy NGO, focusing on the protection and promotion of fundamental rights and freedoms in the Middle East and North Africa. Adopting a holistic approach, we work at both the individual and structural level. We provide legal counselling to victims of human rights violations through recourse to international law mechanisms. In addition, we assess the human rights situation on the ground and bring key issues to the attention of relevant stakeholders to call for legal and policy reform.

125th session of the Human Rights Committee

Half-Day General Discussion on Article 21, 20 March 2019

Palais Wilson, Geneva

CHECK AGAINST DELIVERY

ORAL STATEMENT OF THE NGO COALITION LED BY THE NETHERLANDS HELSINKI COMMITTEE

Mr President, distinguished members of the Committee!

I am very grateful for this opportunity to address you on behalf of the Netherlands Helsinki Committee and its civil society partners hailing from different countries of the Organization for Security and Co-Operation in Europe (OSCE) region.

We thank the Committee for undertaking this timely effort to adopt the first-ever General Comment on Article 21 of the Covenant which encompasses a freedom of peaceful assembly. This essential human right is regretfully very frequently denied to millions of people across the globe. For many marginalized groups peaceful public protest remains the only way to make themselves heard. Many governments, and this unfortunately includes European governments, take steps to restrict the free exercise of the right to hold peaceful assemblies under the pretexts of ensuring public order or safety, or anti-terrorism, or whatever else. We trust that your General Comment will deal with various practical elements of the exercise of the Article 21 right in practice. Our written submission proposes several ideas which might be of interest for the Committee, and it contains numerous references to soft-law documents, including recent OSCE guidelines, as well as relevant regional and domestic case-law. I shall not repeat them now.

I would like to use this opportunity to highlight the most crucial submission that we make in our paper. The participation in a peaceful assembly as such should never constitute a crime, in any circumstances and under any pretext. Various governments employ different logics for criminalization of peaceful protest, creating criminal offences, such as violation of notification requirements, or hiding it under the guise of anti-terrorism legislation. Protections provided by international human rights law should not be made dependent on domestic-law classifications. If the essence of the relevant criminal offence is participation in the peaceful protest, it is never in compliance with Article 21 of the International Covenant on Civil and Political Rights. The use of violence, or destruction of property can be crimes, but the mere participation in the peaceful protest, even unlawful, can never be a crime. One of the precedents for this holding, *mutatis mutandis*, is your General Comment no. 34 on the freedoms of opinion and expression.

I would like to emphasize that even existence of the relevant criminal offence in a statute book is sufficient for the creation of a so-called “chilling effect” that will prevent citizens from exercising their human right to take part in a peaceful assembly.

The principled and unequivocal position expressed by the Committee in this respect will be serving as a guidepost not only for the interpretation of the Covenant but also for human rights defenders across the globe who are fighting every day to protect the public space for expressing dissent.

There are further points in our written contribution that I don’t have time to highlight now. I stand ready to engage in the dialogue with the Committee experts. We are also hopeful that the Committee will remain open for input from civil society actors in the course of the drafting of its General Comment no. 37.

OPEN SOCIETY JUSTICE INITIATIVE

CAJ Committee on the Administration of Justice
Promoting Justice / Protecting Rights

ORAL INTERVENTION
FOR THE HALF-DAY GENERAL DISCUSSION ON ARTICLE 21
20TH March 2019

by Sandra Coliver, Senior Managing Legal Officer for Civic Space, on behalf of the Open Society Justice Initiative and the Committee on the Administration of Justice, Northern Ireland
Sandra.Coliver@opensocietyfoundations.org

Thank you.

In this statement, we address 4 points that are elaborated in our written submission.[1]

First, we call attention to the important relationship between article 21 and the right of access to information guaranteed by article 19.

The basic principle is that *access to information is necessary in order to enable individuals to exercise their right to assemble peacefully, to help police to facilitate the right, and to ensure accountability for the handling of protests.*

However whilst the duty to make information available is clear, states often fail to comply because of a lack of knowledge of the types of information that should be documented and made public.

We recommend that the General Comment should make clear in some detail:
- the types of information that must be collected, analyzed, and published;
- the policies and decisions that must be written down and made public; and
- the procedures necessary to guarantee access to this information.

Public authorities should devote special attention to policies and information needed to protect against arbitrary or discriminatory treatment in the handling of assemblies.

The Justice Initiative and CAJ have set forth these types of policies and categories of information in a set of Principles and Guidelines[2], drafted following consultations with police officials, civil society groups,

[1] See comments posted on the Committee's website: https://www.ohchr.org/Documents/HRBodies/CCPR/GC37/OpenSocietyJusticeInitiative_and_CAJ.docx.

[2] These Principles are available here: https://www.right2info.org/resources/publications/principles-and-guidelines-on-protest-and-the-right-to-information-2/view. The categories of information that should be proactively made available and disclosed upon request include the laws, regulations, decrees, judicial orders, policy documents, standard operating procedures, training manuals, disciplinary codes and other documents that bind or guide law enforcement and other decision-makers concerning matters that may arise in relation to assemblies; the types of equipment used in managing assemblies; information about bodies that manage assemblies, including special

academics and other experts.

Our second set of recommendations concerns the use of undercover agents and other forms of surveillance.

Undercover policing includes the use of law enforcement officers and private security contractors to infiltrate groups engaged in peaceful assembly; and the recruitment and use of informants within target groups. It also includes on-line or digital surveillance. Such practices impact the right to peaceful assembly as well as the right to privacy, protected by Article 17. Their deployment, therefore, must not be unlawful or arbitrary.

It is especially important for the Committee to make clear the standards that apply to assessing the unlawfulness or arbitrariness of surveillance in the context of assemblies -- including the use of informants and undercover agents – given that the General Comment on Article 17 was issued 31 years ago.

Third, we emphasize that when two or more organizers wish to conduct peaceful assemblies at the same time and place, the State is obliged to protect and facilitate both or all assemblies, to the extent possible. The obligation is even stronger where one is a counter-demonstration to the other.

Where two assemblies cannot be accommodated in the same location at the same time, clearly-stated, neutral criteria should be applied in determining which assembly is to be authorized to use the contested location. Priority should not be given to pro-government or regularly-held assemblies.

While incitement to violence or hatred provides one of the circumstances in which public authorities may be obliged to restrict an assembly, any restriction must be the least intrusive means possible.

Fourth, we call attention to a point that this Committee made 3 times in General Comment 34 on article 19, namely, that "the value placed by the Covenant upon uninhibited expression is particularly high" concerning the "free communication of information and ideas about public and political issues between citizens, candidates and elected representatives" and "in circumstances of public debate concerning public figures in the political domain and public institutions".

The European and Inter-American Courts of Human Rights have made similar statements.

We suggest that the Committee should make clear that this principle applies equally to article 21 as to article 19, and that, in evaluating both the positive and negative obligations of States concerning assemblies, assemblies that seek to communicate "information and ideas about public and political issues" should be afforded heightened protection.

THANK YOU FOR YOUR ATTENTION.

---

military units and private security companies; and the procedures for requesting information. These documents should, at a minimum, address circumstances in which dispersal of assemblies or arrest of protesters are permissible; the permissible uses of force in various circumstances; the handling of counter-protests; the right of the media and other public watchdogs to observe and record assemblies; the use of surveillance and undercover agents; and any duties imposed on protesters, including notification requirements.

People's Watch India and International Dalit Solidarity Network
Speaker: Henri Tiphagne

Mr. Chair,

People's Watch and IDSN thank you for this opportunity to share our perspectives on a general comment on freedom of association.

According to the Rapporteur's Note, paras. 4 and 5, we are of the view that a new understanding on Article 21 should contemplate both positive and negative obligations as regards the Right article 21 ICCPR, in view of Article 2 ICCPR and General Comment 31, para. 35. Overall, we invite the Committee to further elaborate on the Rapporteur's para. 17 as regards Article 26. Hence, we are of the view that there is not only room, but also need for considering positive obligations to ensure that vulnerable groups enjoy the right of freedom of assembly on equal footing vis-à-vis other groups.

This multifold normative scheme is justified by concrete instances some categories of individuals sustain in enjoying the right of freedom of assembly. From our experience, Dalit, indigenous peoples and other minority associations and workers face violence and attacks from private parties. Hate speech against organizations working against cast discrimination affects disproportionately the relevant category requiring legislation to combat and redress such violations, as for instance required under Article 4 ICERD (duty to protect)[1]. The CERD, under General Recommendation 35, has stated that racial equality and freedom of expression should enjoy equal importance.[2] We invite the Committee to reflect if this is also the case under Article 21 ICCPR. Further, obstacles exist when these groups wish to enjoy the right of peaceful assembly, requiring States parties to simplify procedures related to the registry of organizations and other notifications the registry of these organizations, the procedures of notification of gatherings and protests, and the registering organizations dealing with marginalized groups, requiring measures of simplifying procedures for registration and notifications (duty to facilitate). Dalit assemblies, demonstrations and gatherings frequently experience stigma and prejudices from the society as a whole, which represents another obstacle for them, thus requiring that States parties create an enabling environment and tolerance to minorities (duty to promote). Under certain circumstances, intersectional forms of discrimination affect the rights of freedom of assembly, as we have witnessed in the case of the Dalit women organizations, facing gender, racial and work and descent forms of discrimination.

Minorities also face obstacles to convey collectively their views in international for a, such as the UN, mainly through unjustified deferrals of ECOSOC accreditation, which represents a *de facto* rejection of the right to freedom of assembly within the UN system. We strongly encourage this Committee to consider elaborating on an obligation upon States parties not to hinder access of civil society organizations to international fora.

---

[1] One example…

[2]

People's Watch India and International Dalit Solidarity Network
Speaker: Henri Tiphagne

Concluding, we believe NHRIs and their regional branches can play a positive role in monitoring independently gatherings in order to assess the level of compliance with Article 21 ICCPR.

I thank you.

20 March 2019

Privacy International's statement at the half-day general discussion on Article 21 of ICCPR

Privacy International welcomes the Human Rights Committee's decision to develop a General Comment on Article 21 of the International Covenant on Civil and Political Rights (ICCPR).

Public authorities and private actors are increasingly capable of monitoring individuals planning and participating in assemblies, whether on line or off line. Privacy International encourages the Committee to develop its analysis on how surveillance technologies are affecting the right to peaceful assembly.

I would like to provide the Committee some examples, based on Privacy International's recent research. I will focus on facial recognition, IMSI catcher, and social media intelligence (SOCMINT.)

Facial recognition

Facial recognition technology uses cameras with software to match live footage of people in public with images on a 'watch list'. It is often unclear who might be on a watch list or where the authorities obtain the images included in their watch list databases. Images could also come from social media.

Facial recognition cameras are far more intrusive than regular CCTV. They scan distinct, specific facial features, such as face shape, to create a detailed biometric map of it – which means that being captured by these cameras is like being fingerprinted, without knowledge or consent.

Facial recognition technology has been used by police forces, despite the fact that often there are no laws or guidelines giving the police the power to use facial recognition.

The technology has been used to monitor protests but also in other public gatherings, music concerts and football matches, shopping centres and high streets, and festivals. There is a valid concern that in some countries it could eventually be rolled out across all public spaces.

IMSI catcher

Governments have many ways of conducting surveillance of mobile phones. One means of capturing mobile phone data is through the use of a device known as an "International Mobile Subscriber Identity" catcher or "IMSI catcher." IMSI catchers operate by impersonating mobile phone base stations and tricking mobile phones within their range to connect to them.

Once connected to an IMSI catcher, mobile phones reveal information that can identify their users and that process also permits the IMSI catcher to determine the location of the phones. Some IMSI catchers also have the capability to block or intercept data transmitted and received by mobile phones, including the content of calls, text messages and web sites visited. And they can send a message to mobile phones in the area as a way of intimidating users or manipulating them to disband or conduct some other activity.

Social media intelligence (SOCMINT)

Demonstrators are often relying on social media platforms both to organise protests and also to protest online. Social media platforms, mobile applications, and other web resources empower and facilitate these exchanges of information. For example, social media were extensively used to raise awareness and mobilise protests during what became known as 'Arab Spring' and more recently by the "gilets jaunes".

Social media intelligence – often shortened to SOCMINT – refers to the monitoring and gathering of information posted on social media platforms.

SOCMINT may include monitoring content posted to public or private groups or pages. It may also involve "scraping" – grabbing all the data from a social media platform, including content posted and other data (such as what one likes and shares). Through scraping and other tools, SOCMINT permits the collection and analysis of a large pool of social media data, which can be used to generate profiles and predictions about users.

The unregulated use of SOCMINT negatively affects the exercise of the right to freedom of peaceful assembly. It has a chilling effect on individuals wishing to demonstrate online, as well as using social media platforms to organise and promote peaceful assemblies.

Conclusions

The use of these technologies during peaceful assemblies or to monitor peaceful assembly online raise similar concerns.

They have a chilling effect on the exercise of the right to freedom of assembly, as the monitoring and recording of participants at an assembly may discourage them from joining it.

They challenge the possibility to remain anonymous during demonstration. Individuals often do not wish to be recognised and in fact may rely on the anonymity of the crowd to protect them against retaliation.

These technologies undermine the capacity of individuals to plan and participate peaceful protests by communicating confidentially without unlawful interference.

The way they operate often lead to indiscriminate surveillance.

In many of the cases documented by Privacy International, and included in our briefing to the Committee, there is a lack of adequate regulation on the use of these technologies at national level. This is often due to the technology being classed by police forces as "overt surveillance", therefore not attracting the level of scrutiny of "covert surveillance" techniques.

Privacy International believes that governments must make clear whether they use these technologies to conduct surveillance of peaceful gatherings or other associative activities and, if so, what rules, if any, govern these types of surveillance.

Governments also need to be able to demonstrate that their use of these technologies is lawful, necessary and proportionate to achieve a legitimate aim as required under Article 21 of the International Covenant on Civil and Political Rights.

Many thanks.

Tomaso Falchetta, Head of Advocacy and Policy, Privacy International

Oral statement for the Half-Day General Discussion in preparation for a General Comment on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights, Palais Wilson, 20 March 2019

This oral submission is made by the Sexual Rights Initiative (SRI).[1]

It has been common practice of treaty bodies to elaborate a conceptual analysis of an article and then, in one or a few paragraphs, address its relationship with other articles. The concept note put forward by the HRCttee for this General Comment follows the same logic by first asking the "unique features of the right" and later asking about the relationship of this article with "other rights in the ICCPR".

Several reports by human rights mechanisms, including the Inter-American Commission of Human Rights and the African Commission of Human and Peoples' Rights, have affirmed that a violation of the right to peaceful assembly is a violation of the rights to freedom of expression and to freedom of association.

This General Comment should contain an integrated and robust framework on how these rights complement each other and how their links can be a platform for social movements' claims. It should not be overly prescriptive of the ways, places and means of assembly. When human rights bodies do so, "international law becomes a ceiling for feminist claims instead of the baseline for more innovative and expansive claims."[2]

A traditionalist or isolated interpretation of Article 21 will negatively affect organizations and social movements, particularly those who challenge sexual and gender norms. Hegemonic actors promoting discourses that uphold harmful gender and social norms have inherent social control power. These actors use their power to categorize who are "peaceful protesters" and who are "violent criminals", they determine who gets assigned to each category, always responding to structures of race, class, gender, sexuality and disability. When people are subjected to practices of violence, control and subordination due to their gender and sexuality, effective assembly is political embodiment, and, therefore, a message of disruption of social norms. Disruption "works for marginalized groups because it demands notice in a way that

[1] http://www.sexualrightsinitiative.com/

[2] Isabel Cristina Jaramillo Sierra, "Women's Suffrage in Colombia: Saving Face While Remaining the Same" (OxHRH Blog, 28 February 2018), Available at: http://ohrh.law.ox.ac.uk/womens-suffrage-in-colombia-saving-face-while-remaining-the-same [28/02/2019]

dispassionate discourse simply cannot. Orderliness can thus quite easily serve power."[3] As activists within the Coalition of African Lesbians have said: "the battle is for ideas and any space where ideas are being articulated and contested is a space we need to be in, even if the physical manifestation of that space may be the UN building."[4]

We urge the Committee to (1) develop a comprehensive interpretation that recognizes the inextricable connection amongst the rights to peaceful assembly (ICCPR 21), freedom of expression (19), and freedom of association (22) and; (2)in its guidance to States, require that any restrictions to these rights meet the strict tests of necessity and proportionality.

[3] Don Mitchell. *The right to the City. Social Justice and the Fight for Public Space*, Kindle Edition, P. 73

[4] Coalition of African Lesbians, *The CAL footprint*, http://ralf.cal.org.za/the-cal-footprint/ (last visited Mar. 4, 2019).

Oral Statement for consideration on Article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights: the case of Spain

By Daniel Amelang, Attorney at Law based in Madrid,
on behalf of UNESCO Center of Catalonia

The right of peaceful assembly recognized by Article 21 of the International Covenant on Civil and Political Rights is also recognized by the Spanish Constitution on its very own Article 21.

This fundamental right (as well as the rights of freedom of expression and political participation), however, is facing serious challenges currently in Spain. Just to mention a few:

1.- RESTRICTIONS: We increasingly find that, in pursuit of "national security or public safety" (two of the permissible limitations set out in article 21), several assemblies are not being considered lawful because of the disruptions they sometimes cause, or due to failure to notify authorities. We must bare in mind that assemblies framed in the right to protest can cause the disruption of traffic and of freedom of movement but this should never be considered a danger to public safety in as of itself.

Due to the consideration authorities hold on assemblies, we find undue restrictions and a sinking space for civil society.

2.- CRIMINALISATION: The violent conduct of certain individuals participating in an assembly is, on certain occasions, attributed to the group as a whole, and renders an assembly as a whole not peaceful. This is the case, for example, of the Dignity Marches in Madrid on March 22nd, 2014.

As a matter of principle, those engaging in peaceful assembly, or organizing it, must not be subject of threat of criminal sanctions.

As the 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 of February 4th, 2016, states: "*while organizers should make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others*".

3.- LEGALITY: On July 1st, 2015, Spain modified its Public Safety Law (Ley Orgánica 4/2015) and its Criminal Code (Ley Orgánica 1/2015). These two reforms came to be known as 'Gag Laws'. Ever since then, authorities have disproportionately restricted the rights to freedom of expression and peaceful assembly. The measures included in the 'Gag Laws' constitute, in the opinion of several NGOs who have studied them, severe restrictions on the right to freedom of peaceful assembly and could be applied arbitrarily and lead to

extremely serious abuses, including the power to deny people their freedom of assembly. As a consequence, a number of diverse forms of expression, including expression on the Internet, using a pretext of national security, have been notably restricted ever since then.

This rise has led to self-censorship for fear of suffering repression, a fall in public debate, and a long-term threat for the strength of civil society and the ability to guarantee not just the right to freedom of expression and of assembly, but also the defense of a series of fundamental human rights.

4.- PROPORTIONALITY: Another response to the exercise of public assembly under Article 21 is, on occasion, the use of unwarranted force by law enforcement and the lack of control of police activity. Dispersing an assembly carries the risk of violating the rights to freedom of expression and to peaceful assembly as well as the right to bodily integrity. Domestic and International law allows for dispersal of a peaceful assembly only in rarest of cases, but there is an abuse of police force in Spain.

5.- CIVIL DISOBEDIENCE, CHARGES AND THE CHILLING EFFECT: Finally, I would like to mention the criminalization of civil disobedience and non-violent direct action. Demonstrations, sit-ins and other stunts through non-violent means, often include conscientious and deliberate violations of domestic law. Regardless of this, it should be considered a form of assembly, when carried out in a non-violent manner and when it doesn't cause a disturbance of other human or fundamental rights, and therefore protected under the Constitution. Criminal or Civil charges can be brought, but they must be proportionate to the nature of the offence. However, all too often, when faced with civil disobedience, States have responded with charging those involved with serious criminal offences, such as terrorism, rebellion or sedition.

Bringing overly harsh charges which have nothing to do with with the recognizable criminal offence committed during the act of civil disobedience has a “chilling effect” on the right to freedom of expression and freedom of assembly.

The clearest example of this is currently taking place in the Catalan Referendum Trial. The Constitutional Court considered the referendum illegal, but thousands of people took to the streets to participate in demonstrations and by voting. The police claim some minor incidents took place in some parts of Catalonia, but all in all it was a peaceful event. The assembly which took place this day is considered by some the largest act of civil disobedience in recent times in all of Europe. The alleged organizers of the referendum which took place on October 1st, 2017, are being tried and are facing possible decades-long prison sentences for these actions.

In this era of regression of human rights worldwide, we must find different ways to confront these challenges and ensure the protection of fundamental rights.