

# Mid-term report of the 3rd cycle of Spain's Universal Periodic Review

The right to freedom of expression  
and the right to freedom to peaceful  
assembly and of association in Spain



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# 1. Introduction

The organisations signing this document have created an ad hoc coalition to join their efforts in preparing this follow-up report for the 3rd cycle of the Universal Periodic Review (UPR) of Spain.

The coalition is composed of the following civil society organisations:



## **Amnistia i Llibertat**

A citizen platform that was born in Catalonia to defend and protect human rights and to put an end to repression against the Catalan pro-independence movement.



## **Associació Catalana de Professionals**

An organisation that brings together professionals from different sectors who have in common their desire to get involved in the social and political challenges that Catalonia has to face.



## **Centre Internacional Escarré per les Minories Ètniques i Nacionals (CIEMEN)**

An organisation that defends the rights of peoples and stateless nations and promotes the Catalan national identity in the world.



## **Fundació Josep Irla**

A research institution based in Catalonia that aims to generate debate and reflection to build a fairer society from a progressive and pro-European approach and to protect the values of freedom, social justice and self-determination in Catalonia.



## **Grup de Periodistes Ramon Barnils**

Association of journalists from the Catalan Countries who work around the defense of rigorous and professional journalism.



## **Language Rights**

Organisation working for the promotion and recognition of cultural and linguistic diversity. From Geneva, it encourages cooperation between language communities around the world to protect language and human rights.



## **Plataforma per la Llengua**

The Catalan-language NGO, created in 1993, with 26.000 members, is a non-governmental organisation that works to promote Catalan language as a social cohesion tool.



## **Sine Qua Non**

A human rights organization that focuses on building capacities for civil society organizations and activists and on creating strategies to seek accountability for human rights abuses through international strategic litigation.

## 2. Object of the report

This mid-term report monitors the third cycle of Spain's UPR. Its content covers the follow-up of those recommendations aimed at protecting civil and political rights, focusing particularly on those related to the right to freedom of expression and the right to freedom to peaceful assembly and of association. In particular, the present document assesses the status of implementation of the 19 recommendations between paragraph 150.80 and 150.98 of Spain's UPR report.<sup>1</sup>

With this document, the organisations that are part of this coalition, report on the progress made after 2.5 years since the review and issue recommendations on how to accelerate the implementation of the state's commitments to secure human rights in Spain.

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<sup>1</sup> Report A/HRC/44/7, paragraph 150.80 – 150.98, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/069/33/PDF/G2006933.pdf?OpenElement>

### 3. Methodology

All the organizations of the coalition have been consulted in the preparation of this report. Each of them provided information on their areas of expertise. The coalition also consulted members of the Spanish Congress and Senate to gather updated data and to monitor legislative initiatives underway or being carried out in the different chambers.

International and European regulations and resolutions, as well as decisions, opinions and official letters sent to the Spanish government have also been consulted.

The state of implementation of all recommendations has been evaluated and the level of accomplishment has been indicated in different colours. All recommendations that Spain has not accepted, or those that, although accepted, have not been implemented nor fully developed are marked in red. Recommendations that address an issue in the process of being developed have been marked in orange, except where, although there is an open process, there is no indication of any change in the line required by the recommendation. Fully implemented recommendations would be marked in green.

**Not implemented**

**Partially implemented  
or in process  
of implementation**

**Implemented**

## 4. Mid-term review

### 4.1. Overview

Spain passed its last Universal Periodic Review (UPR) in January 2020 at the 35th session of the working group on the UPR (UPR WG 35) and adopted the final report at the 44th session of the Human Rights Council, in July 2020.

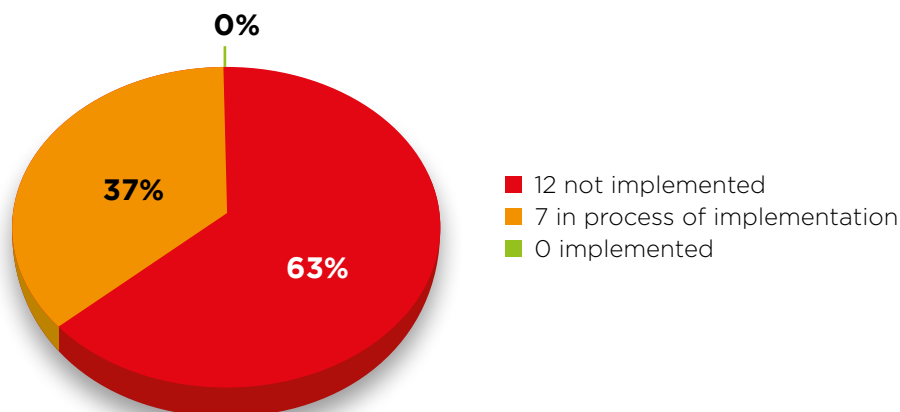
Spain received 275 recommendations and accepted 252 of them. From this latest evaluation, we highlight the number of recommendations received by the state concerning civil and political rights, such as respect for freedom of expression and peaceful assembly, going from 8 in 2015 to 19 in 2020.

- Even though the Spanish State accepted most of the recommendations received regarding the protection of the civil and political rights of freedom of expression and the right to peaceful assembly and assembly, we would like to express our concern about the little effort the State has invested in implementing them.

Through this mid-term report, we analyse the status of implementation of the different recommendations, classifying them in different categories to facilitate the appreciation of the progress made and pending after the adoption of the UPR report in July 2020.

The following graph shows the level of compliance with the 19 recommendations analysed. As it can be seen, there are no recommendations that could be marked in green because none of them have been fully met. Thus, the degree of compliance is expressed in terms of partial compliance or non-compliance with the recommendations.

#### Compliance with the 19 analysed recommendations



## General recommendations

Some of the recommendations, such of those shown in the table below, were aimed at the Spain's compliance with the International Covenant on Civil and Political Rights, to guarantee freedom of expression and association for Spaniards in general terms. In this sense, Spain is encouraged to work on measures in relation to the protection of these basic and democratic rights in a broader and more comprehensive manner.

<b>150.80</b> Take steps to ensure the respect of the rights of freedom of expression as well as association (Ghana)	Accepted	<b>In process of implementation</b>
<b>150.82</b> Ensure the full enjoyment of the right to freedom of expression and the right to peaceful assembly (Egypt)	Accepted	<b>Not implemented</b>
<b>150.83</b> Take all necessary measures to guarantee the right of peaceful assembly in line with its obligations under Art. 21 of the ICCPR (Belgium)	Accepted	<b>Not implemented</b>
<b>150.86</b> Progress in the full recognition of the right to peaceful assembly, in accordance with the International Covenant on Civil and Political Rights (Colombia)	Accepted	<b>In process of implementation</b>
<b>150.87</b> Ensure full respect for the right to freedom of peaceful assembly and association, to participation in public affairs and to freedom of expression, ensuring that all measures aimed at controlling protests and peaceful assemblies are in line with its international obligations (Costa Rica)	Accepted	<b>Not implemented</b>
<b>150.88</b> Ensure respect of the right of freedom of expression, in line with international and European standards (Cyprus)	Accepted	<b>Not implemented</b>
<b>150.89</b> Adopt measures to guarantee the exercise of freedom of expression, and peaceful association and assembly (Islamic Republic of Iran)	Accepted	<b>In process of implementation</b>

## Signing organisations' opinion and recommendations

The signing organisations are not aware of any intention of the Spanish government to work on any specific legislative measure that is aimed at reinforcing these rights, apart from an attempt of reforming the Criminal Code and the Law on Citizen Security, that will be further analysed in the next pages.

For all of the above, the organizations that are part of the coalition recommend to the state:

- To take all necessary measures to ensure full respect for the right to freedom of peaceful assembly and association and to freedom of expression.
- To fully guarantee the right to participate in public affairs, especially protecting the right to protest. Adjusting, when necessary, to international legislation that binds the state to promote and protect these rights.

## 4.2 Penal Code Reform

The reform of the Penal Code was an urgent issue pending in Spain, to ensure that it does not criminalise peaceful acts of civil disobedience or unduly restrict freedom of peaceful assembly or expression by discouraging protest.

In this regard, we welcome a reform of the Penal Code approved on 15 December 2022 in the Spanish Congress that eliminates the crime of sedition and modifies some offences against public order, but we see that it still fails to ensure that peaceful protest is not unduly criminalised.

### 4.2.1 Crimes of sedition, rebellion and public disorders

The state is repeatedly asked to revise the Criminal Code to ensure that civil and political rights are guaranteed.

<b>150.84</b> Guarantee freedom of expression and opinion by revising the Criminal Code to ensure that its crimes are in line with internationally recognized definitions (Belgium)	Accepted	<b>In process of implementation</b>
<b>150.94</b> Ensure full employment of the rights to freedom of assembly and association and freedom of expression and that all measures are in conformity with international standards (Czechia)	Accepted	<b>In process of implementation</b>

### Signing organisations' opinions and recommendations

On 15 December 2022, the Spanish Congress approved a proposal to modify the Organic Law of the Penal Code.

The proposal presented by the two parties in the Spanish government (PSOE and UP), on November 11, 2022, was prepared in the negotiation process between the Catalan and the Spanish governments for the resolution of the political conflicts.

Regarding the content of the reform, we celebrate the elimination of the crime of sedition. We also appreciate to see the reform of the crime of public disorders that includes the derogation of article 559, which refers to penalizing the dissemination of messages that incite to alter the public order. We consider it an important step to protect the freedom of speech and peaceful assembly.

In this sense, although the new definition of the article 557.1 for the crime of public disorders incorporates in the case of invasion of installations it is necessary that "the effective functioning of essential services at these locations has been seriously disrupted" as a condition for the restriction for the application of this article, we regret that the reform increases the minimum penalty up to 3 years of prison for the crime of aggravated public disorders typified under the article 557.2 (being 1 year the minimum penalty with the current version of the Penal Code). Also, the reform also modifies article 557 bis. (former 557 ter.), addressed to punish specifically peaceful occupations of public and private buildings with 6 months to up to 6 years of prison.

This modification endangers the right to peaceful demonstration, and it could still be used to criminalize social movements and peaceful protesters. Unfortunately, we have a history of disproportio-



nate applications targeting social and political activists, such as members of the movement for the right to housing<sup>2</sup> or those advocating for the right to self-determination in Catalonia.<sup>3</sup>

This reform, although being a step in the right direction, is a missed opportunity to repeal the crime of rebellion and to strengthen the right to freedom of expression by repealing other crimes, like the crimes of insults to the Crown, that is analysed in the next point of the report. In our opinion, these political crimes should have been eliminated, as we consider they could be used to criminalise social movements and peaceful protests.

For all of the above, the organizations that are part of the coalition recommend to the state:

- To eliminate the ensure that the reform of the Penal Code applies to guarantee the protection of the right to freedom of expression and peaceful assembly and it is not used to criminalise social movements, by:
  - o Repealing the article 557 bis that punishes peaceful occupations.
  - o Modifying the article 557.2 to reduce the minimum penalty for public offences when acting in a group.
  - o Repealing the crime of rebellion typified under the article 472.

#### 4.2.2 Crimes of defamation and offense

As in the second cycle of the UPR, Spain was requested to decriminalize defamation and move it to the Civil Code, in accordance with international standards:

<b>150.85</b> Review the laws pertaining to criminal offences of insulting the Crown and offending religious feelings, and review Organic Law 9/1983 and the Organic Law on Citizen Security with the objective of protecting the rights of freedom of expression and peaceful assembly (Canada)	Accepted	<b>Not implemented</b>
<b>150.97</b> Decriminalize defamation and include it in the Civil Code, in accordance with international standards of necessity and proportionality with regard to restrictions on freedom of expression (Luxembourg)	Noted	<b>Not implemented</b>
<b>150.98</b> Decriminalize defamation and place it within the civil code, in accordance with international standards of necessity and proportionality concerning restrictions on freedom of expression (Maldives)	Noted	<b>Not implemented</b>

#### Signing organisations' opinion and recommendations

Unfortunately, and despite of the insistence of the international community, it's worrying to note that this is still not a priority for Spain, that decided to only take note of most of these recommendations.

<sup>2</sup> <https://www.eltriangle.eu/es/2022/11/18/las-entidades-sociales-alertan-sobre-la-reforma-del-delito-de-sedicion/>

<sup>3</sup> <https://www.elperiodico.com/es/politica/20221111/omnium-codigo-penal-protesta-sedicion-anc-78430752>

Something similar occurs with the request for a revision of laws relating to the crimes of insulting the Crown and offending religious feelings, as this does not seem to be a prime concern for the government.<sup>4</sup>

We consider both measures essential to reinforce and guarantee the right to freedom of expression in a 21st century European democracy.

Today there are two criminal offenses in the Penal Code that punish insults to the crown and offences to religious feelings. In practice, anyone who refers to the crown or religion, and therefore its institutions, risks to be persecuted. This constitutes a direct attack to freedom of expression and to the democratic principle.

Currently, there are two reforms presented at the Spanish Congress that propose to eliminate these articles: one by the Esquerra Republicana Group and the other by one of the government parties, Unidas Podemos. Sadly, the proposals have been stacked in the process of amendments for months now and the deadline for amendments is still open. As this reform was not included in the Spanish Government's Annual Normative Plan,<sup>5</sup> we do not know how long it will take to be finalised, if at all.

In this sense, we consider that the reform of the Penal Code approved by the Spanish Congress this December 2022 is a missed opportunity as it does not present modifications in the matter of insults to the crown and offences to religious feelings.

For all of the above, the organizations that are part of the coalition recommend to the state:

- To eliminate the crimes of insults to the Crown and the offences against religious sentiments to comply with international standards and recommendations.

### 4.3 Law on Citizen Security or “Gag Law”

The reform of the law on citizen's security is a pending issue that the Spanish state has with respect to the international community since the processing of the law began. Its amendment is necessary to guarantee the right to freedom of expression, assembly and demonstration.

In multiple occasions and from different international organisations,<sup>6, 7, 8</sup> the state has been repeatedly asked to reform the Organic law of 30 March 2015 on the protection of citizen security in such a way that it does not restrict the right of citizens to protest and that it does not allow the legalization of the summary expulsions of migrants who cross the border from Morocco to Ceuta and Melilla, as has been requested in the framework of this procedure since 2015.

4 <https://www.lamonicloa.gob.es/consejodeministros/resumenes/Documents/2022/PAN%20202.pdf>

5 <https://www.lamonicloa.gob.es/consejodeministros/resumenes/Documents/2022/PAN%20202.pdf>

6 Letter from the CoE Human Rights Commissioner to Spain regarding the Organic Law of 30 March 2015: <https://rm.coe.int/letter-to-mr-jose-luis-abalos-meco-president-of-the-interior-committee/1680a57abe>

7 Positioning from Amnesty International: <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/amnistia-internacional-lamenta-que-la-propuesta-de-reforma-de-la-ley-de-seguridad-ciudadana-siga-suponiendo-una-mordaza-frente-a-la-protesta-pacifica/>

8 Report of the UPR working group on the 2nd cycle of Spain: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/61/PDF/G1507661.pdf?OpenElement>

<b>150.81</b> Ensure that the basic law on the protection of public security does not infringe on the freedom of expression and assembly (Iceland)	Accepted	<b>Not implemented</b>
<b>150.85</b> Review the laws pertaining to criminal offences of insulting the Crown and offending religious feelings, and review Organic Law 9/1983 and the Organic Law on Citizen Security with the objective of protecting the rights of freedom of expression and peaceful assembly (Canada)	Accepted	<b>Not implemented</b>
<b>150.90</b> Ensure that the implementation of Articles 36.6 and 37.4 of the Public Security Act, as well as the implementation of Real Decreto-Ley 14/2019 do not counteract the right to civil protest (Germany)	Accepted	<b>Not implemented</b>
<b>150.91</b> Guarantee freedom of peaceful assembly and association, and ensure that in the context of public protests or demonstrations, government actions are carried out with full respect for the international obligations of the State (Mexico)	Accepted	<b>In process of implementation</b>
<b>150.92</b> Take further measures to ensure that the rights to freedom of expression and peaceful assembly are fully respected and effectively investigate all allegations of excessive use of force committed by the security forces (Italy)	Accepted	<b>Not implemented</b>
<b>150.88</b> Ensure respect of the right of freedom of expression, in line with international and European standards (Cyprus)	Accepted	<b>Not implemented</b>
<b>150.93</b> Reform Organic law of 30 March 2015 on the protection of citizen's security and Organic law of 15 July 1983 on the right of assembly, and establish a code of conduct for law enforcement (Switzerland)	Accepted	<b>In process of implementation</b>

### Signing organisations' opinion and recommendations

While we value positively the will of the government to reform the law, we are concerned about the depth of this willingness, as we fear that it will not end up being transferred to a reform of the legislation that guarantees the unrestricted exercise of the rights of expression and peaceful protest.

We are also worried about the processing of the reform. The proposal was entered into the Spanish Congress on 13 December 2019 and the amendment period ended on 10 November 2021. To date, the Interior Committee has been debating the proposal for months, appearing to be far from approval. Besides, there is no provision in the Annual Normative Plan for this reform.

At the moment, we have not seen any reference to the intention to amend or repeal sections 36.6 and 37.4 of the Public Security Act nor is there any pronouncement to that effect.

At this point, it's important to mention the letter of The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, addressed to the Spanish Congress and Senate.<sup>9</sup> The letter points out the fact that the law "continues to give a wide margin of discretion to law enforcement in interpreting it and allows for its potential disproportionate and arbitrary application. This has continued

<sup>9</sup> Letter to Spain - ref CommHR/DM/sf 005-2022, <https://rm.coe.int/letter-to-mr-jose-luis-abalos-meco-president-of-the-interior-committee/1680a57abe>

to lead to the imposition of sanctions on unclear grounds, undermining the exercise of the rights to freedom of expression and freedom of peaceful assembly as protected by the European Convention on Human Rights. In addition, it has also been reported that the administrative nature of these sanctions continues to make it difficult to appeal them”.

For all of the above, the organizations that are part of the coalition recommend to the state:

- To comply with international standards by amending the law of Citizen Security. Specifically, we call for:
  - Stopping the completely disproportionate fines that can be imposed under this law when legitimately exercising the rights of peaceful assembly and freedom and expression.
  - Modifying article 24 of the Citizen Security Law to eliminate the use of rubber bullets.
  - Modifying article 30.3 of the Citizen Security Law to eliminate the subsidiary responsibility of the organisers of demonstrations.
  - Ending police discretion, sanctions for disobedience (article 36.6 law of citizen security) and misdemeanours to the authority (article 37.4), which are also acts that are already included in the penal code.
  - Deleting or amending the first additional provision referring to the hot returns of migrants, in order to put an end to this mal practise and guarantee the rights of migrants and asylum seekers.

#### 4.4 Police violence against peaceful protesters

Disproportionate police violence against peaceful protesters in public demonstrations has been another of the points of the recommendations. Examples of the abusive behaviour of Spanish police officers are the disproportionate actions that they undertook against the people that gathered to vote on the Catalan referendum in 2017, the violent actions against people in forced evictions.

<b>150.95</b> Ensure the independent and effective investigations into cases of disproportionate actions of police officers against participants of public demonstrations (Russian Federation)	Accepted	<b>Not implemented</b>
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#### Signing organisations' opinion and recommendations

The disproportionate actions that the Spanish police officers undertook against the people that gathered to vote on the Catalan referendum in 2017 left 1.066 injured protesters who needed health care. There were injuries of varying severity with 80% of localized injuries of the waist, head, neck and trunk (432 people were injured with multiple injuries, 34 traumatic brain injuries, suggesting great aggression and ferocity).<sup>10</sup>

Five years after the events, and although the State accepts this recommendation, none of these violations have been investigated.

<sup>10</sup> <https://antirepressiva.omnium.cat/en/detalls/dretavot/>

There have also been several cases of police violence in the case of peaceful demonstrations to stop evictions.<sup>11, 12</sup>

For all of the above, the organizations that are part of the coalition recommend to the state:

- To carry out independent and effective investigations in cases of disproportionate actions by the police against protesters.
- Review and modify the action protocols of the Spanish police to avoid the disproportionate use of force and avoid police violence. Further, adapt these protocols to international standards to guarantee the exercise of the right of assembly and freedom of expression.

## 4.5 Violence against journalists

The organizations of the coalition are also concerned about the violence against journalists, for what it means per se and for its consequences against freedom of expression.

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**150.96** Hold accountable those responsible for crimes against journalists or that otherwise undermine the enjoyment of freedom of expression, regardless of whether they are non-state or state actors (United States of America)

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Accepted

**Not  
implemented**

### Signing organisations' opinion and recommendations

Some of those affected by the disproportionate police violence that followed the events of the demonstrations for the judicial sentence of the Catalan political and social leaders in 2019 were journalists. A total of 70 journalists and photojournalists were injured that day.<sup>13</sup>

Five years later, none of these actions have been investigated.

In addition, during the years 2020 and 2021 there have also been attacks against journalists by the police. There have been 17 attacks in the Catalan Countries during 2020 and 2021, as compiled by The Censorship Map, promoted by the Ramon Barnils Group of Journalists.<sup>14</sup>

Another law that in our opinion endangers the right of expression of journalists and can be read as an act of violence against this profession is the the Royal Decree-Law 14/2019, of 31 October.

This law, which adopts urgent measures for reasons of public security in the areas of digital administration, public sector procurement and telecommunications<sup>15</sup> also affects journalists. This Decree facilitates and speeds up the closure of websites by the State. Specifically, the article 6 of the law allows the government to assume control and directly intervene in electronic communica-

11 <https://www.lavanguardia.com/economia/legal/20220510/8226950/2021-registraron-mas-110-desahucios-diarios-30-mas-ano-anterior-ilg.html>

12 <https://beteve.cat/general/iridia-critica-carregues-desnonament-raval/>

13 <https://antirepressiva.omnium.cat/en/detalls/protestasentencia/>

14 Report "Policies contra periodistes. Agressions, entrebancs i sancions contra periodistes per part de cossos policials". Gemma Garcia, Mèdia.cat, 2022. <https://www.media.cat/2022/02/22/policies-contra-periodistes/>

15 Official legislation: <https://www.boe.es/buscar/act.php?id=BOE-A-2019-15790>

tions networks and services. All this without having to ask for a court order, which makes it even more dangerous.

We consider that this new law puts at risk the rights to freedom of expression and information of citizens, allowing unsupervised digital censorship.<sup>16</sup>

For all the above, the organizations that are part of the coalition recommend to the state:

- To carry out independent and effective investigations in cases of disproportionate actions by the police against journalists.
- To repeal or modify Royal Decree-Law 14/2019, of October 31, to comply with international legislation and ensure that the right to freedom of expression and information are secured in Spain.

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<sup>16</sup> <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/el-real-decreto-digital-propicia-la-censura-previa-y-el-secuestro-de-contenidos-en-internet-por-part/>

## 5. Update on the political conflict between Catalonia and Spain

The following information is meant to update the state of the conflict between Catalonia and Spain and its effects on the civil and political rights.

### 5.1 Context information

Between open investigations, proceedings, convicted, exiled, imprisoned, injured and harassed, there are now over 3000 people in Catalonia that have been retaliated against by Spanish authorities, all in connection with the pro-independence push, the preparation of the 1st of October Referendum (1-OR) and the public protests that followed:<sup>17</sup> including against politicians, government officials, mayors, journalists, academia representatives, civil society representatives and members and other civilians.

The most notorious and controversial proceeding is the conviction of the nine pro-independence political and civil society leaders, as heads of the 1-OR on 14 October 2019 to up to 13 years' time imprisonment. In addition, "disqualification from these or any other honors, posts or public positions, or being elected to hold public office for the duration of the sentence".<sup>18</sup>

On June 2021, the Spanish Government issued pardons against the Catalan nine leaders in jail since 2017.<sup>19</sup> However, they are not a solution. Firstly, they are partial (not applied to their sentence of inability to run for public office, so for the remainder of their sentence they won't be able to run). We understand this as a de facto silencing of the opposition. Further, they will still have criminal records (because a pardon forgives the sentence, not the crime); they are reversible (subject to good conduct, and conditioned not to repeat the crime in the next 6 years); they are subject to appeal, and some parties are already doing so; it helps only the nine leaders in jail, not the exiles, not the successors (i.e high-ranking leaders which are pending trial) of the leaders today also facing reprisals. In sum, it's not a solution for the 105 criminal cases opened against pro-independence supporters, which continue to date; It doesn't offer reparations to the victims, etc.; moreover, with the pardons on the table, the ECtHR now will even take further time to decide (seeing that there is no pressure of deprivation of liberty); finally, they don't address the root causes: the demand of the Catalan society to vote to decide their political future or the definitions of crimes which are overly broad defined, and, therefore, the same situation could happen again.

It is particularly relevant in the context of public assemblies and freedom of political speech to highlight that all the assemblies organized by Catalan civil society and supported by the Government of Catalonia in the context of the organization of a self-determination referendum and its

<sup>17</sup> <https://www.omnium.cat/ca/campanyes/mapa-repressio/>

<sup>18</sup> See decision, at Judgment part in pp. 478-482. You may find the Supreme Court Sentence of 14 October, 2019 in English version at: <http://www.poderjudicial.es/cgpi/es/Poder-Judicial/Noticias-Judiciales/El-Tribunal-Supremo-condena-a-nueve-de-los-procesados-en-la-causa-especial-20907-2017-por-delito-de-sedicion>

<sup>19</sup> <https://www.boe.es/boe/dias/2021/06/23/index.php?s=3>

support have all been peaceful and non-violent. This has been attested by the PACE's report *Should politicians be prosecuted by statements made in the exercise of their mandate* (paras. 9.3.1) "As many observers noted, the mass demonstrations surrounding the referendum were impressively peaceful. The widely shown images of these demonstrations are indeed very clear in this respect. The rare violent incidents that were nevertheless observed are attributed by supporters of the Catalan politicians to the police, who occasionally used baton charges, tear gas and rubber bullets to hinder the voting and cordon off polling stations".<sup>20</sup>

### International decisions condemning the situation in Catalonia

To date, several international organizations and NGOs have condemned, either the imprisonment and judicial proceeding against the leaders, or have asked the Spanish government and authorities to directly refrain from pursuing further investigations against the successors of the leaders.

Name of organisation	Conclusions
<b>2019</b> UN Working Group on Arbitrary Detention	Opinion 6/2019; Opinion 12/2019, - arbitrary detention of leaders in violation of fundamental rights and for political opinion reasons
<b>2019</b> International Commission of Jurists	"trial of Catalanian leaders imperils human rights" "Vague, broadly defined offences of sedition or rebellion risk violation of the principle of legality, as well as arbitrary and disproportionate interference with freedom of expression, assembly and association." "they would set a dangerous precedent for the targeting of peaceful independence movements and political dissent, not only in Spain but internationally" "Conviction against the leaders violates human rights..."
<b>2020</b> UN Special Rapporteur on minorities	Report after visit Spain: "non-violent political dissent (...) should not give rise, as the Special Rapporteur points out, to criminal charges since such restrictions should only be imposed where they are strictly necessary and proportionate".
<b>2021</b> Council of Europe Parliamentary Assembly	Resolution 2381: "Reform criminal provisions on rebellion / sedition so they do not lead to "disproportionate sanctions for non-violent transgressions"; "consider dropping extradition proceedings (...)" "ensure that the criminal provision of misappropriation of public funds is applied (...) when factual losses can be established"; "drop remaining prosecutions of the lower-ranking officials involved (...)" refrain from sanctioning the successors of the imprisoned (...)"enter into open, constructive dialogue with all political forces in Catalonia".
<b>2022</b> The Commissioner for Human Rights Letter	Ref.CommHR/DM/sf 005-2022: "Against this background, I call on Parliamentarians to take the opportunity of the review of the Citizens' Security Law to bring it in line with Spain's human rights obligations, including under the European Convention on Human Rights, and ensure that the changes to the law result in a legal framework that better protects the exercise of human rights in Spain".

<sup>20</sup> <http://assembly.coe.int/LifeRay/JUR/Pdf/TextesProvisoires/2021/20210603-ProsecutionPoliticians-EN.pdf>, para 77.



Name of organisation	Conclusions
<b>2022</b> Council of Europe Parliamentary Assembly – Follow-up Report on Resolution 2381	AS/Jur (2022) 15Ç: “numerous criminal cases against other Catalan officials or former officials related to the events surrounding the unconstitutional referendum in 2017 are still pending, as are the arrest warrants against several politicians living abroad. Also, the pardons are now challenged in court. This shows that reconsideration of the provisions on sedition and rebellion remains crucial for ensuring compliance with Council of Europe standards”
<b>2022</b> UN Human Rights Committee	Decision CCPR/C/135/D/3297/2019: “Taking note that the four complainants had urged the public to remain strictly peaceful, the Committee considered that the decision to charge them with the crime of rebellion, which led to their automatic suspension prior to a conviction, was not foreseeable and therefore not based on reasonable and objective grounds provided for by law.”
<b>2022</b> Joint Communication UN Special Procedures	(...) “gives the impression of a consistent pattern and a well-planned program to target activists belonging to the Catalan minority and their supporters regarding their views, opinions and activities.” (...) “this selective targeting (...) is prohibited by international and regional human rights standards.” (...) “urge (the Spanish) Government to take all necessary measures to protect the rights and freedoms of the above-mentioned person(s) and to investigate, prosecute and impose appropriate sanctions on any person responsible for the alleged violations” and “to take effective measures to prevent the recurrence of such events, if they have occurred”.

### Large-scale repression: today's numbers

- 1.983 injured in public assemblies from 2017-2019 (including civilians and journalists).
- 9 civil and political leaders in jail (from 2017-2021) – currently partially pardoned.
- 6 politicians / activists / artists in exile– Belgium, Switzerland, UK.
- 712 Mayors investigated for supporting the referendum.
- 1.500 open criminal cases.
- 65 people spied by Pegasus (as denounced by Citizen Lab in April 2022).
- 17 million Euros worth bails.
- Between current open investigations and proceedings, injured, convicted, exiled, imprisoned and harassed there are over 3000 people in Catalonia retaliated against in connection to the 1 October referendum and self-determination peaceful assemblies.

Profiles affected: politicians, lawyers, activists, journalists, civilians.

## 5.2 Recent uncovered abuses: #CatalanGate–Pegasus espionage

We are very concerned about the #CatalanGate case with more than 65 confirmed victims. As pointed out in its report by Citizen Lab, a laboratory specialized in cyberespionage, the Catalan sovereignty movement would have been under surveillance for the past five years with the Pegasus

malware.<sup>21</sup> We consider that this practice constitutes a violation of the right to privacy, freedom of expression, freedom of the press, due process and a fair trial, and has a strong chilling effect.

We welcome the report that was presented at the 51st Human Rights Council on *The right to privacy in the digital age*, which had the supports of the European Union and the Council of Europe, and which focuses on the abuse of intrusive hacking tools, especially Pegasus. The report also highlights the risk of creating widespread surveillance and control systems that can undermine the development of democratic societies and urges States to refrain from illegal surveillance practices.

We celebrate the Joint Communication that the UN Special Procedures sent to Spain on 24 October 2022<sup>22</sup> in which the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, urgently addressed the state regarding spying activities through the use of Pegasus and Candiru spyware on a large number of Catalan personalities and activists during the period 2017-2020.

In this letter, the Special Rapporteurs express their concern “that the widespread use of this type of spyware may lead to increased self-censorship, which has a chilling effect on the enjoyment of the right to freedom of opinion and expression in Catalonia in general”. Therefore, they “urge (the Spanish) Government to take all necessary measures to protect the rights and freedoms of the above-mentioned person(s) and to investigate, prosecute and impose appropriate sanctions on any person responsible for the alleged violations” and “to take effective measures to prevent the recurrence of such events”.

We join the UN Special Procedures on this call to the Spanish state.

For all of the above, the organizations that are part of the coalition recommend to the state:

- To open an immediate, impartial and public investigation regarding the use of the Pegasus malware, to establish measures that guarantee the non-repetition of the events and to ensure that the victims have access to effective redress.
- To establish a legal and policy framework that makes the acquisition of surveillance tools subject to robust public oversight, consultation, and control.

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21 <https://citizenlab.ca/2022/04/catalangate-extensive-mercenary-spyware-operation-against-catalans-using-pegasus-candiru/>

22 Joint Communication of the UN Special Procedures to Spain - Ref. AL ESP 8/2022

## 6. Conclusions

In this submission we have focused on following up the state of implementation of the recommendations adopted by Spain in the 3rd cycle of the Universal Periodic Review. We have analysed the status of 19 recommendations, the ones that referred to civil and political rights, especially the rights to freedom of expression, assembly and demonstration.

The organisations that sign this report believe that the best way to strengthen democracy is by protecting civil and political rights, ensuring that civil society organisations and citizens in general have space to peacefully protest and express their views freely. Empowering society by guaranteeing people's rights to participate in political and social life is protecting and strengthen the democratic principle.

Sadly, the Spanish state is failing in achieving this premise, as we see that key and representative assets of social and political organisations in Catalonia and Spain have been paralysed to the detriment of democracy, political pluralism, limiting the right to freedom of public participation of citizens.

In this sense, we urge Spain to listen to civil society and to implement the different recommendations that appear in this report without delay.

We also call for the state to comply with international law and the Covenant on Civil and Political Rights together with recommendations from bodies such as PACE or direct recommendations from the Commissioner for Human Rights.

Lastly, we hope that during the two and a half years remaining before the next cycle of the UPR, the State will do its best to put the recommendations into effect, consulting and collaborating closely with civil society organisations.

# Mid-term report of the 3rd cycle of Spain's Universal Periodic Review

The right to freedom of expression  
and the right to freedom to peaceful  
assembly and of association in Spain

January 2023

