

Written contribution on the implementation of the ICCPR by Spain

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A. Introduction

Òmnium Cultural submits this report to the Human Rights Committee with the aim of highlighting ongoing human rights concerns in Spain, particularly in relation to the **rights to freedom of expression, peaceful assembly, and association**, and the Spanish State's compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR) and other relevant international human rights instruments.

Founded in 1961, Òmnium Cultural is one of the largest civil society organizations in Europe (175,000 members), with a longstanding commitment to the promotion of human rights, democratic freedoms, cultural rights, and linguistic diversity. In recent years, we have documented and denounced systemic violations of civil and political rights in the context of Catalonia's political conflict, including the repression of peaceful mobilization, the criminalization of dissent, the instrumentalization of counter-terrorism laws, and the lack of effective accountability for law enforcement abuses.

This report draws particular attention to Spain's failure to guarantee the right to freedom of expression and opinion (Article 19 ICCPR), including the right to express political views without fear of retaliation or criminal sanctions. It also highlights persistent violations of the right to peaceful assembly (Article 21 ICCPR) and freedom of association (Article 22 ICCPR), as well as the State's failure to uphold its procedural obligations under Article 2(3) to ensure effective remedies, accountability, and non-repetition for violations—particularly in cases involving police violence, unlawful restrictions on protest, and reprisals against political and cultural activists.

We urge the Human Rights Committee to take these concerns seriously, and to recommend concrete measures to ensure that Spain complies with its international obligations and guarantees the protection of civic space, the rule of law, and democratic participation.

B. Judicial Persecution Against Catalonia's Independentist Movement and the Amnesty Law

1. Since 2017, over 4,400 individuals engaging in political expression and activism in Spain have faced reprisals—including criminal and administrative proceedings, defamation campaigns, surveillance, and excessive use of force—contravening the protections afforded by Articles 19, 21, and 22 of the International Covenant on Civil and Political Rights (ICCPR).
2. Over 1,700 people have been criminally prosecuted for acts relating to the exercise of the right to freedom of expression, association or peaceful assembly, mainly in connection with the organisation of Catalonia's referendum on self-determination of 1 October 2017 or due to their participation in afterward protests, specially in 2019.
3. It should be noted that, of the 1,700 individuals criminally prosecuted, around 1,000 had their cases dismissed or were acquitted, but only after several years of

court investigations before their cases were ultimately dropped. These years of legal harassment resulted in a severe chilling effect on democratic participation and deterrent from further exercise of fundamental rights.

4. On 14 October 2019, nine political and social leaders who had been in pre-trial detention since autumn 2017, one of whom was Jordi Cuixart (former president of Òmnium cultural), were sentenced to prison for sedition. Earlier that year, the UN Working Group on Arbitrary Detentions (WGAD) had confirmed¹ that their detention was in fact arbitrary and called for their immediate release. Indeed, the deprivation of liberty of Jordi Cuixart and two others contravened articles 2, 9-11 and 21 of the Universal Declaration of Human Rights, and 3, 14, 19, 21-22, and 25 of the ICCPR.
5. However, for an extended period, Spain failed to take concrete measures to implement the WGAD's recommendation.
6. Only on 23 June 2021 and after international pressure from the WGAD, UN Special Rapporteurs, the Council of Europe and many international Human Rights NGOs did the Council of Ministers grant a conditional and partial pardon to the nine prisoners, after they had spent almost 4 years in prison.
7. Their release was conditional on non-recidivism, clearly intended to hinder their ability to resume peaceful activism in support of the right to self-determination. Moreover, the pardons were only partial, as they upheld accessory penalties such as disqualification from holding public office for those who had been elected, thereby infringing on their political rights protected under the ICCPR.
8. In December 2022, the Criminal Code was amended to abolish the crime of sedition, however a new, aggravated type of public disorder was introduced in its stead. This new provision retains elements of the repealed offence and reclassifies traditional protest actions under a different legal framework, thereby continuing to criminalise legitimate forms of political expression and assembly, in violation of international norms.
9. The reform also expanded the scope of conduct that may constitute public disorder by introducing vague terms such as "intimidation" and establishing an aggravated form if committed by "a crowd", a term left undefined. The minimum penalty for aggravated public disorder was also increased from one to up to three years of imprisonment². Such ambiguities violate the principle of legality (ECHR 7) and disproportionately impact the right to protest.
10. On 30 May 2024, an Amnesty Law was adopted by the Spanish Parliament thanks to the coordinated advocacy efforts of Catalan civil society since 2019. However,

¹ Opinion N°6/2019 concerning Jordi Cuixart I Navarro, Jordi Sandez I Picanyol and Oriol Junqueras I Vies (Spain), A/HRC/WGAD/2019/6, <https://docs.un.org/en/A/HRC/WGAD/2019/6>

² Article 557.2 of the Spanish Criminal Code.

to this day many challenges remain for its full implementation, mainly due to the resistance from the Spanish judiciary. The Amnesty Law is a recognition of the political motivation of the judicial persecution and that the acts covered by the amnesty should never have been subject to criminal prosecution. Moreover, the law aims to “return the resolution of the political conflict to the framework of political dialogue”³.

11. The Amnesty Law is supposed to include all persons that were convicted (or with ongoing criminal proceedings), or that were fined in administrative procedures, because they participated in acts linked to the organisation of the referendum of 1 October 2017, as well as demonstrations in support of those sentenced in connection to the referendum, in 2019. By our estimation, more than 700 people in criminal proceedings and almost 900 in administrative procedures are eligible for amnesty, which means that their procedures for disobedience, public disorders, attacks against authority, resistance, embezzlement, etc. should be invalidated.
12. Nonetheless, politically motivated judicial resistance has impeded its full implementation, undermining legal certainty and the separation of powers.
13. The Supreme Court and the High Court of Justice of Catalonia are questioning the constitutionality of the law (while the lower courts are not). In fact, they began challenging the law's application even before it was approved by the Spanish Parliament, and some of its judges have publicly expressed opposition to it. This is also due to the fact that the higher ranks of the judiciary have a strong conservative bias. Indeed, 22 of the last 27 years the Supreme Court have seen a majority of conservative judges backed by the right-wing Popular Party (PP).
14. On 24 July 2024, the Supreme Court challenged the constitutionality of the Amnesty Law, requesting the Constitutional Court to weigh in. The Court included political commentary and highlighted the “*lack of remorse*” shown by the leaders of the independence movement, to which it referred to as a “*coup d'état*”. This kind of language underlines the ideological approach of this court towards the application of the law. The Amnesty Law is still pending review before the Constitution court.
15. It is evident that both the pardon and the subsequent amnesty constitute attempts to avoid a conviction by the European Court of Human Rights, which was seized by Jordi Cuixart and the other political prisoners for violations of several fundamental rights (case *Turull i Negre and others v. Spain*, 30096/21). These include the right to liberty (Article 5 ECHR; Article 9 ICCPR), the right to a fair trial (Article 6 ECHR; Article 14 ICCPR), the principle of legality in criminal law (Article 7 ECHR; Article 15 ICCPR), the freedoms of expression and peaceful assembly (Articles 10 and 11 ECHR; Articles 19 and 21 ICCPR), as well as the prohibition of

³ Chapter V of the Preamble of the Amnesty Law, “Ley Orgánica 1/2024, de 10 de junio, de amnistía para la normalización institucional, política y social en Cataluña” <https://www.boe.es/eli/es/lo/2024/06/10/1>

abusive or politically motivated restrictions on rights (Article 18 ECHR; Article 18 ICCPR). Following extensive written exchanges, notably in connection with legislative developments in Spain, a judgment is expected to be issued shortly.

16. After 9 months since it came into effect, out of 726 people prosecuted on criminal cases, only 116 have benefited from it, 24 cases have been rejected so far and 154 petitions have not have a judicial response yet. An additional 47 cases are suspended due to the submission of constitutional questions to the Constitutional Court or preliminary questions to the Court of Justice of the European Union⁴. The majority of those whose applications were either rejected or forwarded are politicians belonging to Catalan pro-independence political parties.

C. One Thousand Injured, No Convictions : The Impunity of Police Violence on the 1 October 2017

17. On the day of the referendum, 1 October 2017, the Spanish police and military used excessive force against peaceful voters, resulting in over 1,000 injuries. Such actions constitute violations of Articles 2, 6, 7, and 19 ICCPR, and its case-law and contravene the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Official.⁵
18. Several international institutions⁶, including UN Special rapporteurs, immediately urged the Spanish Government to institute effective investigations into the disproportionate use of force against the voters, as well as to identify and impose sanctions against those responsible, and provide acknowledgment of and reparation for the harm caused to the victims.
19. More than a hundred of these victims have filed formal complaints. Eight years after this serious violation of its international obligations by Spain, there has not been one single person convicted, even by a lower Court. Most of the proceedings were closed or dismissed, either due to the State's failure to identify those responsible for the violence—resulting from the police's lack of cooperation—or on the grounds that the use of force was deemed proportionate or because they have been granted amnesty.

⁴ https://amnistia.omnium.cat/img/inf_sindicatura_amnistia_en_gener.pdf

⁵ Spain : Police Use Excessive Force in Catalonia, Hold Independent Investigation into Violence during referendum, 12 October 2017, Human Rights Watch, <https://www.hrw.org/news/2017/10/12/spain-police-used-excessive-force-catalonia>; Spain: Excessive use of force by National Police and Civil Guard Catalonia, 3 October 2017, Amnesty International, <https://www.amnesty.org/en/latest/press-release/2017/10/spain-excessive-use-of-force-by-national-police-and-civil-guard-in-catalonia/>

⁶ Human Rights Commissioner Calls on Spain to Investigate allegations of disproportionate use of police force in Catalonia, 9 October 2017, Council of Europe, <https://www.coe.int/en/web/portal/-/human-rights-commissioner-calls-on-spain-to-investigate-allegations-of-disproportionate-use-of-police-force-in-catalonia>.

20. On the contrary, the victims have been faced with prosecutors unwilling to establish the facts thus making impossible the conviction of the responsible officers and their superiors.
21. We consider this constitutes a flagrant breach of the State's positive obligations under international law, especially its duty to investigate effectively excessive use of force against peaceful protesters.
22. Furthermore, despite the exceptionally large scale of this incident, the Spanish Government has never expressed its intention to prosecute the authors of the violence, nor has it offered reparations to the victims.
23. To sum up, almost all police officers who were accused of torture in different criminal courts have been amnestied without hesitation by the judiciary, although international law expressly prohibits amnesty for crimes of torture. Specifically, 129 Spanish police officers who were investigated for violence against voters on October 1st have been amnestied. This includes 1 officer in Lleida, 46 officers in Barcelona, 45 officers in Mataró, 10 officers in Tarragona and 27 officers in Girona. Additionally, 8 Mossos d'Esquadra officers (Catalan police) investigated for police violence during the 2019 protests have also been amnestied.

D. Labelling Protests as Terrorism

24. Counter-terrorism measures have been used by Spain since 2017 to combat the movement in favour of Catalonia's self-determination, in an attempt to dismantle it. Spanish authorities accuse the population mobilised in favour of the right to self-determination of being a threat to national security. The Spanish judiciary, the Minister of Interior, the CNI (Spanish Secret Service) and the National Police have been carrying out intimidation and smear campaigns, using a security framework that poses a threat to human rights. Secret criminal investigations have been launched and cases wrongfully assigned at the Audiencia Nacional (National Court) under the excuse of national security and accusations of terrorism. The methods they have used include intercepting communications, use of Pegasus spyware, and undercover agents.
25. The definitions of terrorism in the Spanish Criminal Code are overly vague and indeterminate, and do not meet the clarity required under international law, violates the principle of legality. Its current definition gives priority to the final element over the structural element and favours investigations of non-violent acts that have nothing to do with terrorism.
26. The National Court is the special court where the cases related to terrorism are allocated. One way to allocate a case there is to classify certain forms of political dissidence as possible terrorist offences, depriving the accused of their right to be tried by the corresponding judge with competence on the matter according to the law in violation of article 14 ICCPR.

27. In some of the demonstrations protesting the harsh prison sentences imposed on Catalan independence leaders in October 2019, city property was damaged and altercations took place involving the police. These acts cannot be classified as terrorism based on international standards and regulations, which is why most of those involved in the confrontations who were prosecuted were accused of disorders, damages and injuries in the ordinary local courts, but not of terrorism.
28. Nevertheless, several criminal investigations were launched using counter-terrorism legislation, showing an intent to criminalise not only the right to protest but also to delegitimise the very existence of the political movement in favour of Catalonia's independence. Under the justification of the "fight against terrorism", many of those investigations have lacked procedural guarantees, there have been lengthy pre-trial detentions of activists and even mass police surveillance programmes using sophisticated spyware software, physical surveillance, unlawful installation of geolocation devices on cars, access to mail and social networks, and more.
29. A relevant case of the misuse of counter-terrorism legislation to criminalise peaceful protest was the one against the grassroots movement known as Tsunami Democràtic (Democratic Tsunami), an online platform that called for nonviolent mass protests around Catalonia in the aftermath of the sentencing of the political prisoners, in October 2019. The National Court claimed that it constituted a terrorist organisation. The investigation was conducted in secrecy and continued for over four years without the knowledge of those investigated.
30. The actions considered as "terrorism" were all in fact peaceful demonstrations, which, according to international law can in some cases be inherently or deliberately disruptive and require a significant degree of toleration and remain protected under articles 21 ICCPR.⁷
31. Twelve people, including politicians, activists (also members of Òmnium Cultural) and journalists were accused of terrorism for the alleged organisation of the movement. Some of them spent several months in exile in Switzerland due to the lack of guarantees of a fair investigation and trial in Spain.
32. About 400 Catalan organisations signed the manifesto "Protesting is not terrorism"⁸, and in a statement initiated by the European Civic Forum, several NGOs, including Amnesty International, CIVICUS and the World Organisation Against Torture, called on the court to drop the accusations⁹.

⁷ UN Human Rights Committee, General Comment No 37 § 16-21 , CCPR/C/CG/37; CCPR/C/CHN-MAC/CO/1, para. 16

⁸ <https://protestarnoesterrorisme.cat>

⁹ <https://civic-forum.eu/wp-content/uploads/2024/02/Joint-statement-Solidarity-for-Activists-in-Catalonia.pdf>

33. In July 2024, the whole case was dropped on a procedural technicality, to the vocal dismay of the judge leading the case. But the chilling effect of these years of repression remains.
34. Another relevant case of abuse of the term *terrorism* affects 12 people in Catalonia who, since 2019, have been investigated by the National Court under the charges of the crimes of rebellion and terrorist offences and the possession, placement and manufacture of explosives. They are linked to the CDR movement (Committees for the Defence of the Referendum), a grassroots movement with no legal entity which organised some of the demonstrations in Catalonia between 2017 and 2019.
35. Nine of them were detained on 23 September 2019 (just 1 month before the ruling of the Supreme Court against the political prisoners) and seven of them remained in pre-trial detention for 3 months. In June 2021, more people were arbitrarily arrested. The investigation has lacked procedural guarantees, and the criminal chamber of the National Court has reprimanded the investigating judge claiming that the investigation “violates Article 24.2 of the Spanish Constitution and in particular Article 5 of the European Convention on Human Rights”, as the Court has not given the attorneys access to the full content of the investigation.
36. Recently, the defence requested the application of the amnesty, which was supported by the Public Prosecutor's Office, but the National Court decided to submit a preliminary question to the Court of Justice of the European Union. The amnesty law excludes terrorism offences from its application and refers to the definition of terrorism provided by European Directive 2017/541, which states that it must involve serious violations of human rights. In fact, the National Court considers that the facts can be amnestied because they “do not fall within the exclusions of the Organic Law 1/2024 on amnesty.”

E. Catalangate: Widespread Use of Pegasus Spyware Against Activists and Political Opposition

37. Citizen Lab certified in its 18 April 2022 report¹⁰ that at least 65 people in Catalonia were unlawfully infected with spyware between 2015 and 2021. Technical experts from Amnesty International's Security Lab have also independently verified¹¹ evidence of the attacks.
38. This case, known as CatalanGate, is the largest forensically documented cluster of mercenary spyware attacks and infections on record, and the biggest espionage case in Europe and in the world using Pegasus until now. Victims include 4 formers

¹⁰ “An Extensive Mercenary Spyware Operation against Catalans Using Pegasus and Candiru”
<https://citizenlab.ca/2022/04/catalangate-extensive-mercenary-spyware-operation-against-catalans-using-pegasus-candiru/>

¹¹ <https://www.amnesty.org/en/latest/news/2022/04/spain-pegasus-spyware-catalans-targeted/>

Presidents of the Catalan Government, one former President of the Catalan Parliament, dozens of politicians and senior officials, MEPs, members of civil society organisations (including four members of Omnium Cultural), journalists and lawyers. At least 25 victims have filed criminal complaints, but the investigations are practically at a standstill.

39. Regarding the perpetrators, Citizen Lab stated that “strong circumstantial evidence points to a strong nexus with one or more entities within the Spanish government”.
40. In the Spanish Parliament, the socialists (leading the government) vetoed a parliamentary inquiry into the Pegasus operation, but the Spain’s National Intelligence Centre (CNI) recognised it had spied on 18 people out of the 65 victims identified so far by Citizen Lab. The Director of CNI was removed.
41. The Inquiry Committee initiated by the European Parliament to investigate this issue (PEGA) found that espionage had taken place in four European countries - Spain amongst them. About Catalangate it stated that “it has not been possible to establish in what way they were a threat to national security” that would justify the use of spyware against them. The report highlighted that Spanish authorities did not cooperate with the inquiry and refused to share any information with the committee.
42. Several UN Special Rapporteurs urged the Spanish authorities to “conduct a full, fair, and effective investigation” on the Catalangate affair¹², and asked Spain to stop any unlawful interference into the human rights of Catalan activists. Specific concerns were raised as the infringements on freedom of opinion and expression on the people of Catalunya, as well as the interference on rights of minority groups to freely assert and promote their identity, culture and views in violation of international and regional human rights standards.¹³
43. The Spanish government has yet to explain what the grounds were to authorise surveillance on people who were not legitimate targets by any reasonable international standard, or has not shed light on any other details regarding the data collected from them.

¹² <https://www.ohchr.org/en/press-releases/2023/02/spain-un-experts-demand-investigation-alleged-spying-programme-targeting>

¹³ Spain: UN experts demand investigation into alleged spying programme targeting Catalan leaders, February 2023, <https://www.ohchr.org/en/press-releases/2023/02/spain-un-experts-demand-investigation-alleged-spying-programme-targeting>

F. Covert Police Infiltration of Catalan Civil Society Organisations

44. The Spanish Government admitted and even justified¹⁴ the infiltration of undercover police officers within civil society organisations in a document¹⁵ the Interior Ministry sent to Òmnium Cultural to answer a complaint.
45. The Ministry considers "legitimate, suitable and appropriate" to plant undercover agents in civil society organisations to gather information, linking this directly with the normal practices in the prevention of terrorism on the basis of, according to the Ministry, "violent actions and strategies" in the pro-referendum Catalan movement. However, such practices raise serious concerns under Article 8 ECHR, and Articles 17 and 22 ICCPR.
46. Different infiltrations were discovered¹⁶ into political youth organisations, university student unions and social movements.
47. One of the most troubling issues is that in two out of the four uncovered cases the agent used sexual and romantic relationships to obtain sensitive information from activists and to get introduced into social spaces where the agent would then gather information.
48. The revelation of their true identities by the media has caused significant controversy and raised questions about the ethical and legal implications of such infiltration tactics by law enforcement.

G. Systemic Obstruction of Legal Actions Concerning Franco-Era Police Torture

49. The new Democratic Memory Law establishes a new regulatory framework that contributes to the truth, justice and reparation of the victims of the Civil War and the Franco dictatorship, but it does not remove the obstacles to judicial investigation of crimes that were committed. Even if the 1976 Amnesty Law expressly excludes crimes that have involved any type of serious violence against life or physical integrity like torture, the Courts continue to invoke it with an interpretation that is contrary to international jurisprudence, as well as to international treaties and conventions.

¹⁴ https://www.elnacional.cat/en/politics/spain-justifies-planting-undercover-police-in-pro-independence-youth-groups_878760_102.html

¹⁵ https://www.ara.cat/politica/interior-vincula-l-independentisme-l-extremisme-excloent-veu-idoni-infiltrar-hi-agents_1_4479372.html

¹⁶ <https://directa.cat/un-agent-de-la-policia-espanyola-sinfiltra-a-lesguerra-independentista-i-al-moviment-pel-dret-a-lhabitatge/> and <https://directa.cat/dani-el-segon-talp-destat-per-espiar-lactivisme/> and https://www.elnacional.cat/en/politics/unmasked-second-spanish-undercover-cop-planted-barcelona-social-activists_961383_102.html.

50. Spain remains obligated under international law to investigate and prosecute crimes against humanity, torture, and enforced disappearance of persons. Nonetheless, the judicial system continues to block the investigation of tortures committed in many locations, such as in the National Spanish Police station in Via Laietana 43 of Barcelona, a site that many civil society organisations demand be turned into a memorial site. The continued judiciaries obstruction violates the UN Convention Against Torture and its General Comment No 3 (2012), ICCPR (art. 2(3) and 7)¹⁷ and ECHR (art. 3)¹⁸.

H. Recommendations

In light of the above concerns, Òmnium Cultural respectfully urges the Human Rights Committee to draw the attention of Spain to persistent shortcomings in ensuring the full enjoyment of the rights to freedom of expression, peaceful assembly, and association, as enshrined in Articles 19, 21 and 22 of the ICCPR and other applicable international human rights standards.

In particular, we highlight the failure to uphold Spain's investigative and procedural obligations under Article 2(3) of the ICCPR, including the duty to ensure effective remedies and accountability for violations of civil and political rights, as well as the duty to investigate and prevent excessive use of force by law enforcement in accordance with international norms, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

To this end, we call on the Human Rights Committee to recommend that the Spanish authorities:

1. Ensure the full and impartial implementation of the 2024 Amnesty Law, in accordance with international human rights standards, and refrain from applying politically motivated or arbitrary interpretations that would undermine its scope or effectiveness.
2. Cease all unlawful surveillance practices, and undertake prompt, independent, thorough and effective investigations into reported instances of surveillance targeting civil society actors, journalists, and political representatives, ensuring accountability and redress for those affected.
3. Guarantee recognition, reparation, and non-repetition for victims of excessive use of force by law enforcement on 1 October 2017, through the effective identification and prosecution of those responsible, including senior officials and commanding officers who may bear command responsibility.

¹⁷ See also General Comment No 31 (2004).

¹⁸ ECtHR *Šilih v. Slovenia* No 71463/01 (2009), Procedural obligations persist even after the violation.

4. Refrain from the misuse of counter-terrorism legislation to criminalize or unduly restrict the legitimate exercise of the rights to freedom of expression, assembly and association by political opponents, activists, and members of civil society.
5. Ensure accountability for serious human rights violations committed during the Franco dictatorship, by removing legal, political and institutional barriers that hinder effective investigation, truth-seeking, and the rights of victims and their families to justice.
6. Engage in meaningful dialogue to address the political situation in Catalonia, ensuring that any resolution process respects democratic principles and the will of the population, including the principle of self-determination as expressed by a broad majority of Catalan society.