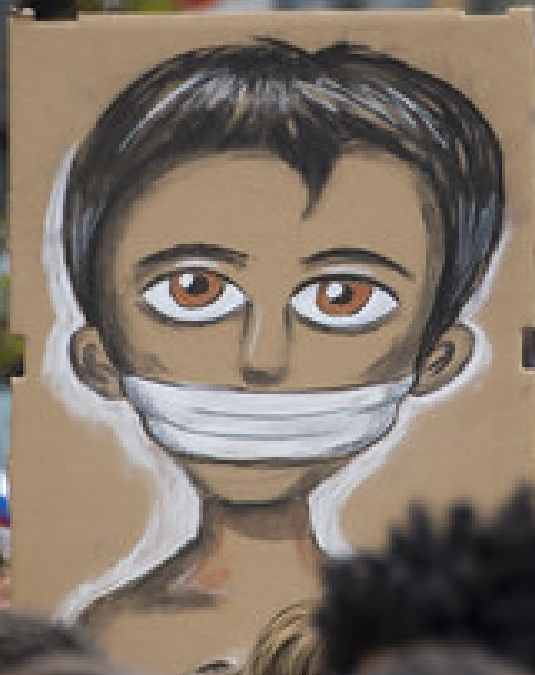


TOOLS OF REPRESSION

Spain and Global Trends in Silencing Self-Determination Movements



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Tools of Repression: Spain and Global Trends in Silencing Self-Determination Movements

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Executive Summary

In recent years, the Unrepresented Nations and Peoples Organization (UNPO) has seen a stark increase in state authorities' readiness to abuse and misuse criminal law to suppress and silence nonviolent self-determination movements.

In doing so, a strong trend has emerged in which state actors are increasingly resorting to concepts such as 'national unity,' 'national interest,' or 'national security' to falsely justify their repressive policies and actions. Under this pretext, tools to criminalize self-determination movements take many forms, including but not limited to, prohibiting free speech and expression, targeted arrests and detention, and broad state propaganda and policy that label self-determination activists as terrorists. By abusing legitimate state power to criminalize self-determination movements, it is frequently the most marginalized groups, such as indigenous peoples and minorities (ethnic, linguistic, religious) who are at the forefront of the government's repression.

These practices are not limited to the world's most repressive regimes. Over the past few years, false notions of national unity have, for example, been used by the Government of Spain as justification for its campaign against the self-determination efforts in Catalonia.

Over the past decade, but particularly in the years since the 2017 referendum, citizens in Catalonia have witnessed a marked deterioration of human rights. Freedoms of press, speech, opinion, association and assembly, the rights to liberty and security of persons, and the right to a fair trial have all been weakened as the Spanish state has attempted to

quash Catalan self-determination. The increasing criminalization of political dissent in Spain, particularly as it relates to the Catalan self-determination movement, has led to widespread arrests of community activists, politicians, journalists, and other public figures who have expressed political opinions divergent to Madrid's.

The entirely disproportionate reaction of the Spanish state to this expression of the legitimate aspirations of the Catalan society not only indicates the Spanish government's disregard of its own citizens' fundamental rights but provides other governments (who are typically non-democratic and non-rule-of-law abiding) around the world justification to implement similar tools of repression against the plight of peoples advocating for their right to self-determination. In December 2021 for instance, the editor of the Chinese Communist Party's newspaper Global Times threatened Taiwanese president Tsai Ing-Weng on social media by presenting the example of the Spanish state as a country that represses independence movements, stating: "If you were a separatist leader in Spain's Catalonia region, you would have been in prison now. So be grateful that you are still living freely in Taiwan province of China."¹

The Spanish government's deployment of harmful rhetoric against self-determination movements must not therefore be viewed as a purely domestic affair, but one that sets a dangerous precedent.

It is a new challenge for the international community, governments, and civil society

around the world who seek to build respect for and observance of the right to self-determination, but also the right to privacy, freedom of speech and freedom of assembly.

This report aims to outline the extent and severity of the Spanish state's criminalization of the Catalan self-determination movement, and in doing so highlight the parallels found with other UNPO communities who face oppression

through similar tools of repression utilized by Spain. It highlights in greater depth the increasing phenomena of state authorities misuse of criminal justice systems to criminalize self-determination movements, before setting the various methods/tools utilized by Spain to suppress the Catalan movement along with parallels seen with other UNPO members.

Introduction

The right to self-determination is a fundamental and integral human right belonging to all peoples to freely determine their own destiny, their own political status, and their own form of economic, cultural, and social development. Fulfillment of this right varies and differs for all peoples who pursue it (such as greater political, cultural, or economic autonomy or full integration or independence from a state, for instance) with the importance lying in the people's ability to choose. The principle of self-determination encapsulates a foundational right to the international system, prominently embodied in the first article of the Charter of the United Nations, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

A. Criminalizing Self-Determination

The right to self-determination is a fundamental and integral human right belonging to all peoples to freely determine their own destiny, their own political status, and their own form of economic, cultural, and social development. Fulfillment of this right varies and differs for all

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Frequently, however, national government's view those who voice support for the right to self-determination as threats to the country's 'national unity' and 'national sovereignty.' Furthermore, they contrast this right of self-determination with the right to territorial integrity, extending the latter to mean that there is no limit to state power when defending territorial integrity.

Rather than fulfilling their obligations to respect and fulfill its people's fundamental rights, state governments are increasingly using these concepts of 'national unity' to silence and extinguish, through the criminal justice system, any support for self-determination movements.

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This can be backed up by numerous studies and indexes showing a regression of democratic standards across the globe.

To criminalize self-determination movements, states typically utilize criminal legal frameworks and criminal justice policy as a means of political and social control. That is, the state employs the legal apparatus available within its national legal and political frameworks to treat the defense, protection, and promotion of the right to self-determination as illegitimate and illegal. In doing so states aim to discredit, silence and even entirely cease the work of self-determination activists and the wider movements.

On the phenomena of criminalizing the work of human rights defenders, the UN Special Rapporteur, on the subject of human rights defenders, observes that “states increasingly resort to legal actions to violate the human rights of defenders denouncing human rights violations. Defenders are arrested and prosecuted on false charges. Many others are detained without charge, often without access to a lawyer, medical care, or a judicial process, and without being informed of the reason for their arrest.”²

The repression of self-determination movements through criminal justice mechanisms therefore not only impedes people's pursuit of their right to self-determination, but also significantly impedes on a wide range of civil and political rights, including the right to policies opinion, participation in public life, and freedoms of expression, association, and assembly.

In this regard it must be stressed that while the right to self-determination does not grant an automatic right to secession or autonomy of any

peoples who seek it, the right to believe in and seek self-determination, including secession or autonomy, through non-violent and lawful means is protected under international human rights law.

B. Tools of Repression and Their Impact

Through the experience of its members, the UNPO have identified a range of tools of repression states deploy in attempt to suffocate legitimate voices, including but not limited to:

- Use of spurious and fabricated charges such as terrorism, treason, or blasphemy to detain activists;
- Creation of broadly defined criminal charges;
- Frequent arrests and detentions, including intentionally excessive delays in criminal procedure and denial or pre-trial rights;
- Unchecked deployment of surveillance and espionage against non-violent actors;
- Ambiguous legislation and states of emergency intended to restrict right to assembly, association, and expression;
- Use of extradition and criminal cooperation agreements with third countries, in effect expanding the states arm of repression beyond its borders (to name a few).

The impacts of such tools go beyond merely silencing the work of peaceful activists. Rather, the credibility and legitimacy of self-determination movements, both located within

the state in question and those located in other territory's, are severely undermined.

Internally, self-determination groups may face having their reputation as peaceful, legitimate and trusted organizations tarnished and destroyed where the State and its apparatus (including media landscape) deem the group unlawful, criminal or even designated a terrorist entity for what academic circles call "securitization" purposes : transforming regular political issues into matters of "[national] security" in order to wrestle away the issue from political-democratic spaces and into the executive branches' hands. Such de-legitimization of groups can contribute to loss of financing opportunities, access to important political spaces, and overall political capital both within their own communities and with the wider public.

Psychologically, the process of criminalization, particularly through fabricated allegations and experiences of detainment, can have a severe impact on the well-being of the individual. Where these groups are scapegoated and/or falsely accused of heinous acts, they may also experience violence and intimidation through mob justice attacks.

Most concerning, the constant act of associating self-determination movements and activists as 'terrorists' or 'separatists,' for instance, creates a devastating impact on the plight of peoples around the world advocating for their political and civic rights. This is particularly the case when democratic and rule-of-law abiding governments, such as Spain or France, decide to deploy harmful rhetoric against self-determination movements. In such cases Western states provide a justification to other governments around the world, who may be less inclined to appear as respecting

fundamental human rights. In this regard, the criminalization of self-determination movements is not a merely domestic affairs but represents a significant global challenge for the international community, governments, and civil society around the world who seek to build respect for and observance of the right to self-determination.

C. Exacerbating Factors

Criminalization of self-determination movements does not occur as an isolated phenomenon;

it is produced within weak judicial systems that enable generalized situations of impunity to emerge. Characteristics of these weak systems usually include:

- An absence of the rule of law: no independent justice mechanisms exist to challenge state power or resolve inter-party conflicts;
- A lack of judicial independence: judges are appointed by legislators or the executive for politically motivated reasons;
- Checks and balances: the legislative, executive and judiciary are all influenced by one core institution or even a single political party;
- Intelligence services and military have no oversight mechanism;
- Lack of transparency of state procedures;
- Endemic corruption

An exacerbation of these characteristics of an authoritarian government present in a nominally democratic society usually leads to

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the slide towards a more authoritarian rule. Furthermore, by manipulating the punitive power of the State to silence and eliminate peaceful rights movement, the State (whether inadvertently or not) creates a paradoxical situation in which the criminal justice system, rather than reduce violence, instead creates greater space for radical and violent groups to emerge, drawing on and awakening the frustration and anger of the public.

The relationship between the state's repression of a peaceful social movement and the emergence of a violent one can be seen in studies and the historical experiences ranging from the British handling of Northern Ireland's Civil Rights Movement to Latin America and Colombia or Peru's tackling of social movements in their respective communities. The intentions of the state are sometimes even to "protect" the movement (as was the case with the British Army being deployed in Northern Ireland) but the normalization of the tools cited in this report led to an overall increase in violent activity.³

The use of criminal or martial law to suppress peaceful self-determination movements is therefore not only contrary to obligations to

protect and respect human rights, but also ineffective policy and obtrusive to maintaining and achieving a peaceful and sustainable society.

By silencing non-violent voices in this manner, states push self-determination movements towards more violent elements, on the one hand, and their political systems develop in a manner that does not reflect the true desires of their constituent peoples on the other. This is in violation of the positive obligation on states to foster and include those voices as outlined in international treaties including Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. 21 on self-determination.

Criminalization poses a challenge for the entire international community, as states use repressive tactics externally and outside of their borders. UNPO has previously documented that extraterritorial reprisals are on the rise and even relatively "safe" areas for refugee activists such as the European continent are now under threat by authoritarian actors through a series of tools that are relevant to the ones present in this report.

Spain and the Catalan Self-Determination Movement

Catalonia is an historical region within the kingdom of Spain, located in the north-eastern corner of the Iberian Peninsula, south of the Pyrenees mountain range, with 947 municipalities and four provinces (Barcelona, Girona, Lleida, and Tarragona). There are approximately 7.5 million people living in Catalonia, with their own language, parliament, laws, and traditions with control over its own

police force and some control over public services. The capital and largest city Barcelona is the second most populated municipality in Spain, and is one of the major economic, financial, and cultural urban centers in Europe.

Having historically faced centuries of wars, persecution and forced assimilation policies at the hands of various rulers of Spain and France, Catalans have a strongly held

conscience of nationhood and will for self-government. This has led to a devolved regional government, known as an Autonomous Community in the Spanish Constitution, a strong sense of Catalan identity notwithstanding the current constitutional debate.

With the continuing lack of powers, the region holds to fully decide over its own laws, financial system and general affairs, a self-determination movement had firmly taken hold in Catalonia, supported by a majority of voters in successive regional elections, with a regional government in favor of self-determination and an array of civil society actors organizing for a referendum of the future political status of Catalonia.

The Spanish state's disregard for the Catalan people's fundamental rights have been ceaselessly demonstrated in recent years, particularly following the 2017 Referendum on the independence of Catalonia, leading to heightened tensions between those supporting Catalan self-determination and the central Spanish government. The following section provides a brief overview of events demonstrating the major developments of Catalonia's support for greater self-governance since the inception of democracy in Spain.

A. Catalan Autonomy

After Franco's death in 1975, Catalonia voted for the adoption of a democratic Spanish Constitution in 1978, in which Catalonia recovered political and cultural autonomy, restoring the Generalitat (exiled since the end of the Civil War in 1939) in 1977 and adopting a new Statute of Autonomy in 1979, which defined Catalonia as a "nationality" and devolved limited powers to the region, though

still having its laws and decisions subject to the Spanish State.

In the run up to the regional elections in October 2003, the main Catalan political parties proposed to reform the 1979 Statute of Autonomy with the aim of consolidating Catalonia's self-rule and finally accommodating Catalonia within a pluralistic Spain. Parties supporting a new Statute of Autonomy obtain 88% of seats and the popular vote in the Catalan elections.

In September 2005, the Parliament of Catalonia approved (with the support of 120 MPs out of 135) and sent to Madrid the proposal to reform the 1979 Statute of Autonomy recognizing Catalonia as a nation, preventing Madrid's interference in certain devolved powers. It also gave the Government of Catalonia full control over a transparent financial arrangement. The proposal was challenged and amended by the Spanish People's Party, severely watered down by the Spanish Parliament, and eventually brought before the Spanish Constitutional Court.

Following a referendum on the issue on 18 June 2006, 'Yes [to the new Statute]' won 73.90% of the votes, while 'no' was supported by 20.76% (although the abstention was high at 50.59%). The new Statute of Autonomy of Catalonia was finally approved. The Statute of Autonomy of 2006 tried to consolidate and extend the self-government established by the Statute approved in 1979, most notably, defining Catalonia as a nation in the preamble of the text; reinforcement of the Catalan language as the own language of Catalonia, making it the main language of Catalan administration and introducing the duty to learn it, alongside Spanish; and several new competences of the Generalitat.

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In June 2010, the Spanish Constitutional Court after four years of deliberations, struck down or watered-down certain provisions of the 2006 statute, including those relating to language, justice, and fiscal policy –. Notably, the Court held: “The interpretation of the references to ‘Catalonia as a nation’ and to ‘the national reality of Catalonia’ in the preamble of the Statute of Autonomy of Catalonia have no legal effect.” The court also criticized the right to self-determination of the Catalan people, relying on UN General Assembly Resolution 1514 and Declaration 50/6 in support of the contention that such a right is limited to specific circumstances and does not encompass a right to secession.

In July 2010 mass protests broke out against the courts claim there was no legal basis for the recognition of Catalonia as a nation culminating in the 2010 one million people march on Barcelona under the banner “We are a nation, we decide”. Moreover, while waiting for the Courts decision, which drastically limited the regions power, Catalan civil society launched a strengthened grassroots movement to defend the region's right to self-determination, which organized 554 municipal referendums on independence, in several waves, from September 2009 to April 2011. The Catalan National Assembly (ANC), founded in 2012, organized another million and a half-strong mass demonstration on the Catalan National Day in 2012 in Barcelona, and a human chain for Catalonia's independence which united the country from North to South in 2013.

In 2013, the Catalan government announced a vote on Catalonia's independence on 9 November 2014. However, due to Madrid's prohibition to vote on this topic, the referendum was organized as a non-binding consultation

which resulted in 80% of voters supporting independence. The regional president at the time, Artur Mas, and three Catalan Cabinet members were fined for disobedience and misuse of public funds.

On 9 November 2015, the Catalan parliament approved a declaration that stated its will to start the process to create a Catalan State under the form of a Republic. In September 2016, Carles Puigdemont, Mas' successor announces plans for a binding referendum on independence to be held in 2017.

The Spanish government accused the Catalan parliament of committing a “constitutional and democratic atrocity” by approving the legislation and expressed its will to do everything in its legal and political power to stop the vote.⁴ Following an appeal from Spanish Prime Minister Mariano Rajoy, the Spanish Constitutional Court suspended the referendum blocking the way of the ballot on independence.⁵ The Court later claimed the law was against national sovereignty and the “indissoluble unity of the Spanish nation.”⁶

B. The 2017 Referendum

The October 1st, 2017, referendum on the independence of Catalonia saw participation of 2,2 million people (43% turnout), with the “Yes” to independence gaining 90% (2,044,038 votes) of the votes cast.

In response to the referendum, Spanish authorities sent thousands of personnel of the National Police and Guardia Civil to Catalonia, the latter which is a police body under the authority of the Ministry of Defense. The police actions included hunting for ballot boxes, mail, posters, and fliers promoting the participation in the referendum. Masses of

paperwork and postal mail were reported and confiscated, which could not be counted.

The response of Spanish National Police and the Spanish Civil Guard was also disproportionately violent. The Catalonia's Health Department estimated that 893 people had reported injuries to the authorities.⁷ In Barcelona, police shot rubber bullets at people waiting to enter the polling station.⁸ In Girona, police used batons and shields to charge repeatedly at people who had linked arms to stop them from entering through a school, hitting them on their heads, arms, and torsos.⁹ The Spanish states use of force was widely condemned by human rights organizations and political actors worldwide for the disproportionate levels of police brutality imposed.¹⁰

On October 10, 2017, the pro-independence parties in Catalonia sign a declaration of independence in the Parliament of Catalonia. Catalan President, Carles Puigdemont, suspended the effects of the declaration to allow for an international mediation and a negotiated solution.¹¹

C. The Aftermath: Arrests of Catalan Leaders

In the following days of the Referendum, Jordi Sanchez President of the ANC and Jordi Cuixart, president of Òmnium Cultural, were charged with the crime of sedition as organizers of the 20 September demonstrations, the Spanish court decreed their imprisonment without bail.¹² On 27 October 2017, 70 out 135 Catalan lawmakers voted to recognize the results of the referendum and declared Catalonia an independent nation.¹³ This resulted in the Spanish President Mariano Rajoy announcing the direct rule of the Generalitat of

Catalonia via Article 155 of the Spanish Constitution, which dissolved the Catalan Parliament.¹⁴ The functions of the presidency of the Generalitat were delegated to the vice President of the Spanish Government, and the functions of each Ministers were assumed by the different ministers of the Spanish Government.

The Chief State Prosecutor confirmed shortly after that they had filed two charges for rebellion, sedition, and embezzlement; one against President Puigdemont and his government, which was processed in the National Court, and the other against the President of the Parliament Carme Forcadell, and the panel which proceeded to the Supreme Court.¹⁵

The 20 defendants including Santi Vila and Joan Josep Nuet were as follows; from the Catalan government: Carles Puigdemont, Oriol Junqueras, Jordi Turull, Raül Romeva, Antoni Comín, Josep Rull, Dolors Bassa, Meritxell Borràs, Clara Ponsatí, Joaquim Forn, Lluís Puig Gordi, Carles Mundó, Santi Villa, Meritxell Serret; and from the Parliament: Carme Forcadell, Lluís Corominas, Lluís Guinó, Anna Simo, Ramona Barrufet, Joan Josep Nuet.¹⁶ The public prosecutor requested bail be set to 6,207,450 euros or the seizure of the defendants' assets.

On October 30th President Carles Puigdemont, along with Ministers Meritxell Serret, Toni Comín, Lluís Puig and Clara Ponsatí, announced their exile in Belgium. On November 2nd, after Spain summoned article 155 of the Spanish Constitution to exert direct rule over Catalonia, several prominent Catalan members of government are imprisoned on pre-trial by order of the National Court upon being charged with crimes of rebellion,

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sedition, and embezzlement. Accordingly, half of the government were imprisoned, while the other half had sought safety in exile in Belgium. A European Arrest Warrant was subsequently issued for Puigdemont, Comin, Puig, Serret and Ponsatí.

Catalan cities then saw massive protests as a consequence of Spain's excessive crackdown against its political leaders. The imprisonment of elected representatives and civil society leaders on charges such as sedition had been widely criticized by UN bodies and human rights organizations alike for their damaging interference on freedom of expression, association, and assembly.

In early December 2017, some political prisoners were released, including Ministers Jordi Turull, Raül Romeva, Carles Mundó and Josep Rull, however Vice president Oriol Junqueras and Minister Joaquim Forn, as well as the civil society leaders Jordi Sánchez and Jordi Cuixart were kept in pre-trial prison.

The European Arrest Warrant for the exiled members of government was withdrawn by the Supreme Court on 2 December 2017, though was later reactivated in March 2018. On March 25 Puigdemont was arrested while traveling through Germany, though was released on 6 April as German judicial authorities refuse his extradition and grant his conditional release.

In July of the same year, German courts decided to process the European Arrest Warrant to extradite Puigdemont on charges of misuse of public funds. However, charges of rebellion and sedition were discarded since the court considered that violence in the events for which his extradition was requested could not be proven. Belgian authorities similarly rejected Spain's extradition request on 9 May 2018, with

Brussels Court of First Instance stating the European Arrest Warrants issued for the three Catalan ex-ministers, Meritxell Serret, Antoni Comin, and Lluís Puig were irregular, for there were no valid underlying national laws corresponding with the content of the warrants.¹⁷

For those remaining in Spain, on 11 December 2018 the Attorney General's office petitioned for the following sentences: 25 years in prison for Junqueras, 17 years for Forcadell, Cuixart and Sanchez, and 16 years for Joaquim Forn, Jordi Turull, Raül Romeva, Josep Rull and Dolors Bassa.¹⁸ In total the Prosecutor demanded more than 177 years of prison sentences for the Catalan leaders.

On 12 February 2019, the Spanish Supreme Court began the trial of the twelve, charging them with broadly-defined crimes of rebellion, and disobedience, as well as the misappropriation of public funds in their bid for the self-determination of Catalonia and its people.

On 14 October 2019, the Spanish Supreme Court imposed severe sentences on the Catalan politicians responsible for the 2017 referendum on independence for Catalonia. The verdict accused individuals of sedition, disobedience, and misuse of public funds. Rebellion, which was the principal charge of the accusation and is a criminal offense that requires violence, could not be proven according to the sentences. Although the Supreme Court dismissed the charges of fomenting rebellion, it imposed severe prison sentences for the crime of sedition and in some cases misuse of public funds, ranging from 9 to 13 years. In addition, under the terms of the judgment those convicted were to be debarred from political activity in future.

D. International Response

The international community displayed widespread condemnation of the actions taken by the Spanish authorities during the referendum and subsequent trial of the Catalan leaders

- On 2 October 2017, the Civil Liberties Union for Europe (Liberties) and Rights International Spain (RIS) noted that more than 800 were injured during the 2017 referendum caused by the Spanish authorities abuse of power.¹⁹ The two organizations called for all complaints of police misconduct to be investigated and sanctioned.
- On 4 October 2017 UN experts urged for a political dialogue between Spain and Catalonia, after the violence of the referendum. The UN experts called for an investigation into activists' injuries and for Spanish authorities to fully respect fundamental human rights, including the right to freedom of peaceful assembly, association, and freedom of expression.²⁰
- In March 2018, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein noted that the Spanish government's characterization of the excessive use of force by police at the 2017 referendum as legal, legitimate, and necessary was questionable. Further, he reminded Spanish authorities that pretrial detention should be considered as a last resort, and instead to find a resolution through political dialogue²¹
- In April 2018 UN Special Rapporteur on the rights to freedom of opinion and expression, David Kaye, expressed

concerns that the charges of rebellion for actions not based on violence or incitement to violence could intervene with the right to protest and dissent.²²

- In May 2018, the UN Working Group on Arbitrary Detention called on Spain to immediately release the Catalan political prisoners and to acknowledge their right to obtain compensation and other types of redress. They state that their fundamental rights have not been respected, especially the right to freedom of speech. The Opinion considers that their detention was arbitrary and contrary to the Universal Declaration of Human Rights, with a clear desire to silence the demands for Catalonia's self-determination.²³

A complaint was filed with the Council of Europe Commissioner of Human Rights against the violations of human rights in Catalonia by the Spanish state during the 2017 referendum. It highlighted the actions that the government had taken against Catalonia, and its citizens and institutions, including going through the courts to avoid negotiations with the Catalan leaders which lead to serious violations of rights and liberties of citizens.²⁴ A full and independent investigation was called for looking into the rights of freedom of expression and assembly, of election, and to not be discriminated against for political opinions, freedom to fair trial, and to freedom of appeal and preparation of defense. As enshrined under national and international legal instruments including the European Convention on Human Rights, and the International Convention on Civil and Political Rights, all which Spain is a signatory party.²⁵

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In June 2021, shortly after the release of the European Council Report on the prosecution of politicians in Turkey and Spain, the Spanish government formally pardoned the nine Catalan leaders, who had all served at least 3 years and 4 months of their prison sentences. The decision did not however overturn the prisoners' ban on holding office or offer an amnesty to hundreds of others facing charges over the 2017 referendum. The pardons are seen as “conditional” and “reversible” according to the Spanish authorities.

Furthermore, In August 2022, the United Nations Human Rights Committee found that Spain violated the rights of Catalan political leaders in suspending them as Members of Parliament.²⁶

E. Rule of Law Concerns in Spain

The treatment and arrests of academics, journalists, community activists and other public figures who have expressed support for the Catalan self-determination movement, and the severe prison sentences imposed on Catalan politicians relating to the 2017 referendum raises significant concerns over rule of law conformity in Spain.

In its compliance report on Spain, the Group of States Against Corruption (GRECO) concluded that none of its eleven recommendations contained in the 4th Round Evaluation Report related to judicial independence has been implemented satisfactorily or dealt with in a satisfactory manner by Spain. Similar sentiments were expressed by the Venice Commission, for whom concerns over judiciary independence raise considerable issues. Indeed, instances of political interference within the judiciary have been well documented, and an

obvious lack of judicial independence has been recurrently acknowledged by European and International bodies alike.

The Council of Europe has criticized the fact that under current law, the 12 judges who sit on the 20-member General Council of the Judiciary—which oversees the courts and is responsible for appointing, transferring, and promoting judges—are not directly elected by their peers, but appointed through a three-fifths vote in the Senate, as with the other eight members who are not judges. This arrangement has exposed the body to “political disruptions.”²⁷

In May 2019, the United Nations Working Group on Arbitrary raised concern that the trial of the Catalan politicians was not fair in its form, finding that the victims right ‘to be judged by a competent and impartial court was unobserved’.²⁸ Freedom House’s 2021 report on Spain also found that regarding civil and criminal matters, authorities have shown flaws within the defendants’ full due process rights during trial in high-profile cases related to self-determination movements. For example, the trials of the Catalan leaders in 2017 showed disproportionate charges and penalties as well as unjustified pretrial detention—that drew criticism from international organizations.²⁹

In October 2020 it was reported that citizens had written to the President of the European Parliament on the rule of law, calling for intervention in favor of rule of law which the government of Spain had been complained to have not been respecting.³⁰ In its response, the European Parliament raised the urgent need for the Union to develop a robust, comprehensive and positive agenda for effectively protecting and reinforcing democracy, the rule of law and fundamental rights for all its citizens,

highlighting the European Parliament's resolution, adopted, by 521 votes in favor, 152 against and 21 abstentions, proposing the creation of an EU mechanism to protect and strengthen democracy, the rule of law and fundamental rights.

In the European Commission's 2021 Rule of Law Report on Spain, it highlights that perceptions of judicial independence are particularly low among the public and companies: "Overall, 38% of the general

population and 39% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2021. Both figures have decreased in comparison to 2020 (44% for the public and 42% for companies)".³¹ On institutional issues related to checks and balances, the EU report also identified that the space for civil society organizations in Spain is facing challenges.

Comparative Trends in Repressing Self-Determination

The Unrepresented Nations and Peoples Organization, through its member-based network of self-determination and minority rights activists, has witnessed an increase in governments worldwide subjugating their own citizens to tools of repression. The purpose is the silencing of self-determination movements. Tools include arbitrary arrests and detentions, excessive use of force from police, extrajudicial espionage, prohibition of freedom of assembly, association, and expression, imprisoning or killing of activists or others who might express dissent against the regime or power.

As established in section 1, such oppressive actions are instilled often to make the citizens living within their jurisdiction feel hopeless, chock-holding their freedoms in exchange for complete power over them. Importantly, these tools of repression are not only being developed in the world's most repressive or authoritarian regimes, but can be seen in Western Europe, particularly Spain, as clear policy choices to suppress self-determination sentiments.

This section explores the varying tools of repression promoted by Spain against the Catalan self-determination movement, along with parallel examples from other UNPO communities. In this regard, Spain's impunity in its repressive policies against the Catalan minority enable such tools to become increasingly frequent and normalized for other governments around the world.

A. Broadly-defined Criminal Charges

Legal provisions defining criminal acts which are vague and ambiguous risk broad interpretations by judicial authorities at the detriment of those engaging in self-determination activism. Offences and penalties ought to be both accessible and foreseeable to prevent the arbitrary application of such laws against citizens with dissenting views to the state.

The Council of Europe provides that insufficient 'quality of law' concerning the definition of criminal offences and applicable

penalty constitutes a breach of Article 7 of the European Convention on Human Rights.³² The principle of legality, enshrined by Article 7, requires all criminal conduct to be clearly defined and its definitions to be accessible and foreseeable. Its definitions are foreseeable if people can understand what actions will result in criminal responsibility and what sentences may be handed down for those actions. This is because laws which are ambiguous or broadly defined are liable to abuse by state authorities. The Inter-American Commission on Human Rights also refers to the use of offences that are ambiguous “or runs contrary to democratic standards so as to criminalize legitimate actions carried out by defenders would also constitute a violation of the principle of legality.”³³ The Organization for Security and Co-operation in Europe highlights how legislation containing “legal provisions with vague and ambiguous definitions, which lend themselves to broad interpretation and are or could be abused to prosecute human rights defenders for their work [...]”.³⁴

Crimes typically abused in this manner through politically motivated arrests and detentions include, typically, rebellion, sedition, terrorism, unlawful association, civil disobedience and the disturbance of state security, public safety or the protection of health or morals.

1. Imposition of Sedition and Rebellion Charges in Spain

In Spain, significant concern has been raised with regards to the broadly defined criminal charges which have been used against activists and politicians advocating for Catalan self-determination. Upon the February 2019 start of the trial of the 12 Catalan leaders for their involvement in the October 2017 independence

referendum, the following charges were imposed among the defendants: rebellion, sedition, disobedience, and misuse or embezzlement of public funds.

During and following the trial, significant concern and criticism was voiced over the arbitrariness and lack of clarity around the definition of these charges, particularly of sedition and rebellion, which are typically considered outdated, and rarely if ever used in Europe.

Specifically, the crime of sedition under Spanish law requires a “[...] public and tumultuous uprising, to prevent, by force or outside of legal means, the application of the Law or any authority [...],” carrying up to 15 years imprisonment. Notably, as the definition does not explicitly require the use or threat of violence (‘by force or outside of legal means’), meaning a broad range of peaceful actions, including demonstrations and protests refused authorization by the state or other conscious and deliberate violations of law to express social political dissent, are liable to be criminalized. In contrast, the law of rebellion required a “violent and public uprising” for certain defined ends, such as “declaring the independence of a part of the national territory” and carried a maximum prison sentence of 30 years.

Importantly, non-violent direct action, including acts of civil disobedience, are protected under the rights to freedom of expression and peaceful assembly, even when they imply breaking a law, if they are undertaken peacefully.³⁵ Likewise, demonstrations cannot be said to lose their peaceful character because a minority of participants engage in violence or commit an illegal act. By criminalizing a broad range of

non-violent direct actions that are protected under international human rights law, the crime of sedition thus permits the Spanish state to wield undue power to restrict the rights to freedom of expression, association, and peaceful assembly. In this light, it is understood that the imposition of ‘rebellion’ charges against peaceful and legitimate demonstrations for the right to self-determination, are entirely arbitrary.

The decision to charge the political figures with rebellion and sedition was indeed highly criticized for its incompatibility with fundamental rights. The UN Special Rapporteur on the right to freedom of opinion and expression, David Kaye, urged Spanish authorities to refrain from pursuing the criminal charge of rebellion against political figures and protesters in Catalonia.

“Prosecutions for ‘rebellion’ that could lead to lengthy jail sentences raise serious risks of deterring wholly legitimate speech, even if it is controversial and discomfiting [...] International human rights law cautions that, especially in situations involving political dissent, restrictions should only be imposed when they are strictly necessary and proportionate to protect the State’s interests.”³⁶

In February 2019, the International Commission of Jurists (ICJ) warned that the trial based on broadly defined offences of rebellion, and sedition risked unnecessary and disproportionate interference with rights of freedom of expression, association and assembly – “The ICJ is concerned that prosecutors, and the Supreme Court in admitting the indictment in the case, have ascribed an unduly broad meaning to the offence of “rebellion” under article 472 of the

Criminal Code [...] Where peaceful protests or political actions, even if declared unlawful by the authorities, provoke an excessive response by the police, it is solely the police and other state authorities who should be held responsible for the violence.”³⁷

Amnesty International similarly voiced in 2019 that they were “concerned that the sentences handed down to both members of civil society and public officials are based on the vaguely defined and broadly interpreted crime of sedition. Moreover, this could lead to further criminalization of actions directly related to the peaceful exercise of the rights to freedom of expression and peaceful assembly.”³⁸

While the charges of rebellion were eventually dismissed because the Supreme Court was unable to establish evidence that the Catalan referendum organizers used or advocated use of violence, the sedition charges were kept in place. Nine of the 12 accused received prison sentences for the crimes of sedition; of them, four were also found guilty of misuse of public funds. Their sentences ranged from 9 to 13 years.

2. Treason Charges in Ghana

The Volta region of Ghana, known as Western Togoland to its inhabitants, is home to a sizable population of Ewe people, who span the border into Togo to the east. Over the past decades, but since 2017, the people of Western Togoland have undergone a tumultuous period, facing continuous repression against them by the Ghanaian authorities, culminating in the Homeland Study Group Foundation (HSGF – UNPO member representatives of Western Togoland seeking self-determination) declaring the independence of the Volta region in November 2019.

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Like the Catalan case, the declaration of independence was met by intensified efforts by the state to target and criminalized any support for the right to self-determination.

Since the movements first attempt to declare independence in May 2017, there has been a wave of mass arrests of activists, often resulting in lengthy periods of pre-trial detention; without the individual being charged in the location they are charged; or provided inappropriate and broadly defined charges, such as treason. Without sufficient evidence for the courts to prosecute under Ghana's domestic criminal law, the activists are eventually released, before a court has had an opportunity to rule on the legality of the arrest or the length of the detention. Upon release, activists are frequently rearrested, repeating the entire process again in a clear attempt by the Ghanaian state to weaken the movement.

For example, on 12 March 2017 HSGF leaders Charles Kormi Kudzordi, Martin Asianu Agbenu, and Divine Odonkor were arrested and charged with treason.³⁹ The reason for their arrest was that they were wearing shirts that referred to the declaration of independence which was made on 9 May 2017. In May 2019, in advance of a meeting to discuss self-determination, eight members of HSGF were arrested and detained on charges of charged with conspiracy to commit treason felony.⁴⁰ A large group of approximately 80 additional supporters were subsequently arrested. Then, after November 2019 when the HSGF made a second symbolic declaration of independence, some 30 people were arrested for either attending a gathering at a local radio station or planning a demonstration.⁴¹ On 14 July 2021, George Nyakpo, current leader of the HSGF, was arrested on claims he committed an act of

treason/felony for he "prepared to carry out by unlawful means an enterprise to usurp the executive powers of the Republic".

Section 182 of Ghana's Criminal Offenses Act 1960, which the HSGF members have often been charged with, states "a person commits a treason felony and is punishable as for a first degree felony who; (a) prepares or endeavors to procure by unlawful means an alteration of the law or of the policies of the Government, or; (b) prepares or endeavors to carry out by unlawful means an enterprise which usurps the executive powers of the Republic in a matter of both a public and a general nature".⁴²

This provision covers extremely broad circumstances. Section (a) in particular, criminalizes any political or social dissent via protests or demonstrations (or even plans to do so) which state considers unlawful, and which aim for political and legislative reform from the government ('an alteration of the law or of the policies of the Government'). As iterated above,

non-violent direct action, including acts of civil disobedience, must be protected under the rights to freedom of expression and peaceful assembly, even when they imply breaking a law, as long as they are undertaken peacefully. In section (b), the phrasing 'in a matter of both a public and a general nature' is particularly ambiguous in meaning, and liable to broad interpretation, particularly against self-determination movements who the Ghanaian state view as a threat in 'usurping' the executive powers of the State.

Critically, the HSGF has been openly and peacefully engaging the Western Togoland self-determination issue since 1994. The group is dedicated to working for self-determination

solely through non-violent means and its activities typically consist only of dialogue, protest, and other non-violent symbolic acts, as well as discussion about the history of “Western Togoland” alternative forms of self-determination for its people, having never incited or promoted violence against the state or the Ghana government.

On 14 July 2021, George Nyakpo, was arrested and charged with treason felony as he violated the “Prohibited Organization Act” of 1976. This act, unilaterally enacted by a military junta controlling Ghana in the mid-1970s, violates basic principles of international human rights law by establishing a blanket ban over any organizations working on or discussing the rights of the people of Western Togoland and criminalizes any persons engaged with such organizations. The Act did not appear to have been used at all since Ghana’s transition to democracy, and indeed had not been used against the HSGF at any point since its foundation in 1994, despite the organization openly advocating for the rights of Western Togoland since that time. Yet it was deployed in a criminal case against Mr. Nyakpo in 2021.

The Ghana government’s misuse of the criminal law results in the systematic pattern of continuous arrests and releases of HSGF members, and the continued infringement on rights to freedom of expression, association, and assembly. The Prohibited Organizations Act and other criminal laws used to bring about charges of treason or treason of felony have the effect of criminalizing and crippling non-violent self-determination movements and activists within Western Togoland. As a result, the state violates not only its own domestic

legal laws but also its obligations held under international legal instruments.

B. False Accusations of Terrorism and Misuse of Counter-Terrorism Measures

Spurious charges and accusations of terrorism against self-determination activists constitutes another tool of oppression increasingly prevalent among unrepresented communities across the world. Like crimes of rebellion and treason, counter-terrorism measures are liable to be misused and defined in such a broad and ambiguous manner, allowing the State to target anyone critical or voicing dissent against the government and its institutions. The impact of falsely being designated a ‘terrorist’ is particularly serious, as individuals and/or groups will be barred from participating in political spaces and may be perceived by the public as highly dangerous and deserving of persecution.

In 2011 the United Nations General Assembly expressed concern that “national security and counter-terrorism legislation and other measures have been misused to target human rights defenders or have hindered their work and safety in a manner contrary to international law.”⁴³ In 2019 the report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism highlights how the expansion of national security measures to combat terrorism, which have steeply risen post 9/11 are intrinsically linked to the shrinking of civil society.⁴⁴ The Special Rapporteur observes – “Although States often justify measures against civil society through broad invocations of countering terrorism, preventing and countering violent extremism or

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protecting national security, targeting civil society actors is wholly inconsistent with meaningfully attending to those genuine threats”.⁴⁵

The misuse of counter terrorism measures causes the legitimate exercise of freedom of expression and freedom of association to be criminalized as propaganda for terrorism or as proof of membership of terrorist organizations. In its General Comment No. 34 published in 2011, the UN Human Rights Committee underlined in that respect that “such offenses as ‘encouragement of terrorism’ and ‘extremist activity’ as well as offenses of ‘praising’, ‘glorifying’, or ‘justifying’ terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression.”⁴⁶

The labeling of self-determination activists as ‘terrorists,’ ‘terrorist sympathizers’ or ‘anti-nationals’ ultimately presents governments an extremely convenient way to scapegoat and stigmatize individuals the wider movement. Such anti-terrorism measures enable the state authorities, and sometime military authorities, to react rapidly and rigorously to silence those it accuses.

1. “Glorification of Terrorism” in Spain

Spain is considered a case in point for the misuse of counter-terrorism measures. Broad and vaguely defined convictions for “glorifying terrorism” and “humiliating the victims of terrorism” under the country’s counter-terrorism laws have been harshly criticized for targeting legitimate speech.⁴⁷ Investigations under these laws have had a chilling effect on freedom of speech in Spain.

Under Article 578 (1) of the Spanish Penal Code, it is illegal to engage in “public praise or justification of the criminal offences listed in Articles 572 to 577 [terrorism-related offences], or those who have participated in the perpetration thereof or the perpetration of deeds that involve discredit, disdain or humiliation of the victims of terrorist criminal offences or the relatives”. The offence is punishable with a sentence of up to three years imprisonment.

Although this provision was first introduced in 2000, it is only in recent years, following its amendment in 2015, that prosecutions and convictions under Article 578 have sharply risen. The provision was broadened with a view to increasing sanctions when such conducts occur via the internet. Moreover, in a widely criticized move that broadened the scope of the law even farther and increased its ability to be misused against political opponents, Spain’s Supreme Court ruled in January 2017 that it is possible to commit an offence under Article 578 even if there was no intention to glorify terrorism or to humiliate victims.

Upon the reforms on the penal code provisions criminalizing the glorification of terrorism, five UN experts raised concerns about these amendments to the Criminal Code, warning that they “could criminalize behaviors that would not otherwise constitute terrorism and could result in disproportionate restrictions on the exercise of freedom of expression, among other limitations,” noting that the definition of terrorist offenses were too broad and vague.⁴⁸

For instance, in 2018 Pablo Hasél, a Catalan rapper, was charged and imprisoned and fined for ‘glorifying terrorism’ and insulting the Spanish monarchy through his songs and

tweets.⁴⁹ On the same day the court ordered imprisonment of Hasél, the president of the European Court of Human Rights (ECHR), Robert Spano, issued a warning to Spain that the Strasbourg doctrine on crimes of insulting the Crown is ‘clear’ and that ‘public office holders must accept wider ranges of criticism’.⁵⁰

Similar accusations were made against the Catalan rapper Valtonyc who was in exile in Belgium. However, Spain’s attempts to have him extradited from Belgium under the European Arrest Warrant were denied by the Belgian courts.⁵¹

In March 2021 the Council of Europe made public a letter addressed to the Minister of Justice of Spain, in which the Commissioner for Human Rights invited the Spanish authorities to amend the Criminal Code to strengthen existing safeguards of the right to freedom of expression.⁵² The letter expressed “concerns about the lack of clear definition of some of the notions enshrined in the provision on glorification of terrorism and recalls the potential danger posed by the use, in anti-terrorist legislation, of catch-all labels and of broad and insufficiently defined offences which may lead to unnecessary or disproportionate restrictions to the right to freedom of expression.”⁵³

The rise in prosecutions under Article 578 has taken place in the context of the rapidly shrinking space for expressing dissent in Spain, while the result is increasing self-censorship and a broader chilling effect on freedom of expression in Spain.

At the same time, Spain has designated certain groups supporting Catalan self-determination as terrorist entity’s and charged those

associated with the groups with inappropriate and excessive charges like rebellion and terrorism.

For instance, in April 2018 Tamara Carrasco, a member of the Defense Committees of the Republic (CDR - Comitès de Defensa de la República), was arrested by the Spanish Guardia Civil along with seven other people associated with the push for Catalan self-determination.⁵⁴ Carrasco was arrested near Barcelona and transferred to Madrid’s National Court on charges of terrorism and rebellion. Then, on September 23, 2019, the Civil Guard arrested 9 members of the CDR in Barcelona. The members had been monitored for more than a year under Operación Judas and were arrested on terrorism and possession of explosives charges. The charge claimed that the group planned attacks as a result of the Trial of Catalonia independence leaders, and 7 were charged with belonging to a terrorist group. Later in June 2021, the Spanish National Guard concluded an investigation that defined the CDR as a “criminal organization with terrorist purposes [and] capacity of assault, occupation and seize of institutional Catalan buildings ad infrastructures”.⁵⁵

- “As with all terrorism-related offenses in Spain, those convicted under this provision must be subjected to a lengthy period of disqualification from the public sector, which means, among other restrictions, that they are excluded from pursuing a wide range of professions and from running for public office. Excluding individuals from political positions because they have expressed alternative political views perceived to “glorify terrorism” is particularly troubling”⁵⁶

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Lastly, the Spanish government has taken active measures to use these accusations in order to silence Catalan self-determination voices in international institutions. One example was at the OSCE Supplementary Human Dimension Meeting in November 2019 in Vienna, when one of Assembleia Nacional de Catalunya's representatives, Jordi Vilanova, spoke on the abuse and breaches by Spain of the rights of the Catalan people, and in particular, the right to peaceful assembly.

In their right to reply as the delegate of a member state, the representative of Spain took the floor to cite then president Elisenda Paluzie, who had recently responded to a question by a journalist on whether the disturbances that had taken place in Barcelona would have negative effects for the Catalan cause, to which she replied affirmatively but adding that they could also make the conflict more visible to international public opinion. The Spanish delegate then proffered a misleading interpretation, saying that "Mr Vilanova's organisation" – avoiding citing ANC by name – "fostered violence", requesting that the organization should be banned from taking part in any future OSCE events or meetings.

The anti-independence association Sociedad Civil Catalana filed a suit against Elisenda Paluzie for apology of violence, and the public prosecutor opened an investigation in November 2019 which was dismissed in May 2020, with no formal communication to the accused, nor of its opening, nor of its dismissal.

2. Algeria's abuse of anti-terrorism members to silence Kabyle Self-Determination

In recent years, the government of Algeria has instigated a serious escalation of repression and

violence against peaceful dissent. The criminalization of self-determination movements represents an extremely troubling trend in line with what we are seeing increasingly around the world. Criminalization of Kabyle self-determination movements in Algeria has taken many forms, including but not limited to, modifications of the penal code to expand definitions of terrorism, pronouncing UNPO member Movement for the Self-Determination of Kabylia (MAK) an illegal terrorist entity, targeted arrests and arbitrary detention of anyone supporting Kabyle self-determination, prohibiting free speech and expression, and broad state propaganda and policy that label self-determination activists as criminals and terrorists.

In what seems an entirely politically motivated move to de-legitimize and neutralize the Kabyle self-determination movement, the Algerian High-Security Council in May 2021 classified MAK as a terrorist organization, accusing the group of planning violent attacks and promoting separatist circles. Rather than constituting a security measure, MAK representatives have expressed legitimate concerns that the decision provides the Algerian government with a means to commit violent or terrorist acts itself and attribute them to MAK. The classification of MAK as a terrorist group has led to significant wave of arrests and detentions of human rights activists, journalists, as well as anyone seen to be associated with the group

Recent reforms to Algeria's penal code which widen the definition of terrorism have exacerbated the situation. Ordinances No. 21-08 and No. 21-09 entered into force on 9 June 2021 and introduces two additional paragraphs to Article 87bis of the Algerian Penal Code,

which defined the crime of terrorism. The amendments include an expansion of the definition of terrorism to acts “undermining the integrity of national territory” and acts “attempting to gain power or change the system of governance by unconstitutional means.”

The introduction of these new provisions aggravates the already broad and imprecise character of Article 87bis definition of terrorism. The focus on ‘territorial integrity’ in the said paragraph in particular shows a clear impetus to target self-determination activists. As already discussed, the resorting to concepts of “territorial integrity” or “national unity” to justify repressive actions against minorities, indigenous populations and self-determination movements are increasingly being used by states. Moreover, the term “to gain power or to change the system of governance” in the first paragraph is similarly troubling and arbitrarily wide. The provision ensures the state’s ability to prosecute any opposition to the current system of governance. The term “non-constitutional” raises concern for pro-reform or pro-democracy activists who wish to register their movement in a non-violent manner outside the institutional framework set by the authorities.

Article 3 of Ordinance No. 21-08 introduced Article 87 bis 13 into the Penal Code, which provides the establishment of a national list of terrorist persons and entities. The phrasing of the article implies that it is possible to be classified a terrorist even without a final judgment, running contrary to the principle of presumption of innocence. The reform also adds a provision issuing that from the date of publication of a decision to register a person or entity on the list, the person or entity concerned has 30 days to request their removal from the

commission. The right of individuals and entities to an effective remedy is thus seriously limited by the tightness of the time limits, by the absence of individual notification and by the fact that any complaints will be lodged before the same body from which the contested decisions emanate.

Confirming the fears of human rights groups that the overly broad definition could lead to the further criminalization of peaceful dissent; hundreds of arrests have since taken place against individuals exercising their rights to peaceful assembly and expression.

While a spectrum of political dissidents, journalists and human rights defenders have been subject to a massive crackdown via arbitrary arrests and detentions over the past year in Algeria, MAK activists and others affiliated with the Kabyle self-determination movements have been particularly targeted. From May 2021 until April 2022, UNPO received information of at least 303 cases of Kabyle political activists being detained. According to MAK, 10 of those detained in 2021 suffered from torture and sexual abuse while incarcerated.

The human rights implications, particularly as they relate to the freedom of assembly and association, are therefore acute. The penal code reforms related to terrorist definitions (article 87bis), the pronouncement of MAK as a terrorist entity, and the mass arrests and detentions which followed, have precluded, and outlawed all activity of Kabyle self-determination activists in Algeria. These developments only exacerbate an already highly restrictive environment for civil society organizations and human rights defenders in Algeria.

In December 2021 UN Special Rapporteurs issued a Joint Allegation Letter to the Algerian Government expressing concerns over the undermining of fundamental human rights within the country.⁵⁷ The JAL focused on specifically the way the Algerian State defines terrorism and instrumentalizes anti-terrorism legislation to crack down on fundamental rights such as freedom of expression and assembly. Many of the victims of abuse of anti-terrorism legislation are either Kabyle or members of the Hirak democratization movement that rose in in Algeria in 2019.

Moreover, in the Human Rights Committee's Concluding observations on the fourth periodic report of Algeria held in July 2018, it stated that: "While the Committee acknowledges the exigencies involved in combating terrorism, it reiterates its concern with regard to article 87 bis of the Criminal Code as that article defines the crime of terrorism in overly broad and vague terms that would allow for the prosecution of actions that might constitute exercise of the freedom of expression or peaceful assembly. It is concerned as well by claims of inappropriate use of counter-terrorism measures against human rights defenders and journalists."⁵⁸

3. Pakistan and the use of anti-terrorism legislation against civil society

The struggle for self-determination, by Pakistan's ethnic and indigenous minorities is being met with gross human rights violations. These include extrajudicial killings, arbitrary detentions, denial of freedom of religion, torture and enforced disappearances. The main perpetrator of these violations are the Pakistani

armed security forces, who play an increasingly powerful role in the country's affairs.

Pakistan has been prone to heavy militarization since its creation, and the civilian political space has declined since the Afghan War in the 1980s, with the military reclaiming power over the civilian government⁵⁹. Arbitrary arrests, enforced disappearances and extra-judicial killings are therefore justified by the Pakistani government under the "Anti-Terrorism Act (ATA)"⁶⁰. The practice of enforced disappearances has been ongoing since the 1970s but turned into a "standard practice", as Pakistan became a vital partner to the United States in their global military campaign on the "War on Terror"⁶¹. Enforced disappearances do not only violate the Declaration on the Protection of all Persons from Enforced Disappearance (A/Res/47/133) but Pakistani armed forces are committing crimes in violation of the Pakistani constitution as per Article 9⁶².

Intelligence and security agencies further play a significant role to Pakistan's politics. Surveillance is "seen as an issue of national security"⁶³ but the sector, which receives significant funds from the government, is known to spy on its citizens and its laws against cybercrime are being misused against human rights defenders, journalist, and activists⁶⁴. In 2016 the Prevention of Electronic Crimes Act (PECA) became a law in Pakistan and is part of Pakistan's National Action Plan to combat terrorism. It is meant to halt "cyberstalking, online harassment, forgery, blasphemy and forms of cyberterrorism"⁶⁵. However, PECA regulates the internet in such a way that the authorities have unrestricted access to the data of its citizens, infringing

their right to privacy⁶⁶. Furthermore, in February 2020 the Citizens Protection Rules 2020 were approved, which will provide Pakistani authorities with the user data and social media accounts of its citizens. Additionally, international social media companies will have to mandatory “remove any material deemed undesirable by the authorities”⁶⁷.

The growing censorship of the online space and online speech, infringes on the right of freedom of expression. Likewise, these laws and regulations grant the Pakistani armed security forces broader access to continue enforced disappearances and detentions of activists and journalists, notably, of those who criticize the Pakistani military or protest enforced disappearances⁶⁸. In addition, the anti-terrorism court has sentenced people to death and to life imprisonments based on the increase in online surveillance, targeting people who commit blasphemy⁶⁹. Pakistan has strong Blasphemy laws in place. The laws go back to 1860, during the British colonial rule over India and were inherited by Pakistan in 1947⁷⁰. Changes have been made over the years, specifically, the adding of a new clause in 1987, turned the laws into ‘an Islamist tool in the Pakistan Penal Code’⁷¹. Between 1987 and 2016, approximately 1.472 people have been charged with blasphemy⁷². While Blasphemy is punishable by death and as such engraved in the Pakistani penal code, nobody has been sentenced to death judicially. Nevertheless, as the capital punishment is included within the penal code, vigilante mobs and individuals have taken it upon themselves to commit judicial killings.⁷³

According to Privacy International, Pakistan made use of seven international firms from

France, Germany, Sweden, China, and the US to provide the intelligence services with equipment to intercept⁷⁴. The Chinese company Huawei was accused of creating a backdoor with its technology “to collect sensitive data important to Pakistan's national security”⁷⁵. China’s involvement in Pakistan, especially through the China-Pakistan Economic Corridor, also includes plans for fiber-optics and surveillance, with plans of building surveillance and monitoring systems within Pakistani cities⁷⁶. Pakistan already uses different tools of surveillance to either tap phones or use intrusion malware on its citizens. Such as during the start of the Covid-19 Pandemic, when it became public, Pakistani intelligence services made use of anti-terrorism technology, which is used to locate militants, to now track and monitor Covid-19 patients through their phones.⁷⁷

For Pakistan’s ethnic and indigenous minorities, the Sindh, the Baluch and the people of occupied Gilgit-Baltistan, the oppression experienced by Pakistani armed security forces and the persecution of the state against the peoples fight for self-determination will only be worsened with the continuing growth of digital surveillance.

4. Russian labelling of Crimean Tatars as extremists and terrorists

Crimea is home to the Crimean Tatars, an ethnic Turkic and Muslim minority. Since the 2014 annexation of Crimea by the Russian Federation, the peninsula now holds status as Autonomous Republic of Crimea and is thus a de-facto Russian republic (oblast)⁷⁸. Although the discrimination against Crimean Tatars by ethnic Russians in Crimea dates back many years, the annexation worsened the

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discriminatory practices, turning it into institutionalized persecution. Institutional discrimination limits access to education, bans religious institutions and businesses and infringes upon the political, religious, and cultural identity of the Crimean Tatars. Under the false pretense of accusing Crimean Tatars as “threat to regional security”⁷⁹ and labeling them as terrorists, Russian armed forces and security agents inflict various human rights violations on Tatars. Countless of people, including activists, human rights defenders, lawyers, and legal defenders, as well as journalists, all who advocate for the self-determination of their people, have faced enforced disappearances, abductions, forced exile, systemic intimidation, government ordered attacks and torture, alongside arbitrary arrests, and imprisonments⁸⁰. Tatars who are imprisoned face terrible conditions, including torture. Eskender Bariev, who is the head of the board of the Crimean Tatar Resource Center and Head of the Department of Legal Affairs and Foreign Affairs of the Mejlis of the Crimean Tatar, argues that torture used against Crimean Tatars are a use of intimidation and a tactic to get Tatars to leave Crimea, resulting in the indigenous people migrating out of their homeland⁸¹.

In January 2019, Vladimir Putin signed into force Russian laws, that will worsen the already harsh prison environment for people convicted of ‘public calls to terrorism, its public justification or propaganda’⁸². In October 2021 Crimean Tatar lawyer Edem Samedlyayev was arrested by Russian authorities for offering advice to his clients, who have been arbitrary arrested under terrorism charges. Samedlyayev himself was being accused of possessing extremist tattoos and ordered to undress in front of a police officer. Although he was

released after twelve days in prison, on pending review of the charges against him, about a month later 21 Crimean Tatars, including civic journalist were detained for bringing his case to public attention. Thus, resulting in their imprisonment of fourteen days. Other Tatars who protested for the release of Samedlyayev were arrested a few days later, including Dilzaver Memetov, who was detained for an offense under Article 20.2.2 § 1 of Russia’s Code of Administrative Offenses, which prohibits organizing, holding, or participating in meetings.

Furthermore, arbitrary arrests are connected to religious persecution in connection to labeling Tatars as terrorists. Around a dozen of Crimean Tatars have been sentenced on terrorism charges, for their religious and political beliefs, with Russian authorities claiming they are connected to the banned Hizb-ut Tahrir, a non-violent Islamic political party, that wants to establish an Islamic caliphate⁸³. Zerkirya Muratov was arrested July 2020 for the possession of religious literature, with a Russian prosecutor arguing in January 2022 for Muratov to be found guilty under Part 2 of Article 205 (participation in the actives of a terrorist organization) of the Criminal Code of Russia⁸⁴. Russian courts have also banned the house of Tartar representatives (Mejlis) as being terrorist/extremist. On September 4th, 2021, the deputy chairperson of the Mejlis, Nariman Dzhelyal was arrested for allegedly aiding in damaging a Russian gas pipeline, an offense under Article 205.5 of the Criminal Code of the Russian Federation (organization of terrorist activities). During his 24-hour detention, Dzhelyal was left with a bag over his head, no access to a lawyer, nor food or

water⁸⁵. Before his arrest, his house was searched. Crimean Tatar's houses are being forcibly searched for alleged possessions of weapons and explosives, a violation under Russian criminal code Article 222.1 § (illegal procurement, possession, carrying of such explosive devices)⁸⁶. Two months later, in November 2021, Dzhelyal had additional charges of "smuggling an explosive device, as part of an organized group (Article 226.1 § 1, carrying a sentence of from 7 to 12 years' imprisonment)" brought against him⁸⁷.

While Russia cracks down on Crimean Tatars seeking self-determination, the Russian government misuses the right to self-determination for its own colonial expansion⁸⁸. The breakaway territories Donetsk and Luhansk of Ukraine have been recognized as independent countries by Russia, without basing this recognition on a legal referendum⁸⁹. A similar geopolitical strategy was also used when illegally annexing Crimea, excluding the Crimean Tatars from taking part in the referendum.

5. Turkey's suppression of Kurdish activists and political party members

Since the ascension of the Justice and Law Party (AKP) to power under Recep Tayyip Erdoğan in 2002, The republic of Turkey has continued to backslide back into authoritarian practices. Kurdistan rights activists struggling for political space have withstood the worst of such a downturn in democratic quality. Kurds in Turkey constitute a sizable minority estimated between 10 to 15 million, principally in the east of the country. The entire Kurdish population is spread out across the Middle East, principally in Syria, Iraq, and Iran in

addition to Turkey. The lack of state for Kurds has made them a vulnerable minority in all four countries, with each having their own Kurdish self-determination movement. Turkey is unique in that it has characteristics of a democratic regime, but its treatment of Kurdish rights activists has been found wanting. An example of this is the 2016 imprisonment of MPs from the minority rights interest-focused People's Democratic Party (HDP)⁹⁰. These imprisonments and targeting of the HDP, a party that has a strong electoral base in the Kurdish-inhabited parts of Turkey, has been criticized by human rights groups. Some estimate that the total number of HDP members targeted by Turkish justice is upwards of twenty thousand.

Overall, Human Rights Watch estimates that at least 8,500 people have been detained, many on false charges, relating to being associated with the Kurdish militant group, the PKK (Kurdistan Worker's Party). The Erdogan government refuses to distinguish HDP activists with the PKK, despite only sporadic cases of dual membership, resulting in the crackdown. This is a classic strategy seen across self-determination movements designed to stifle and restrict democratic, peaceful spaces for self-determination advocacy. The Turkish constitution bans ethnic denominated parties. As a result, the amalgamation of the HDP – a party which while represents Kurds and is popular with Kurdish self-determination activists stands as a party for all Turkish citizens – with the PKK allow the Turkish justice system to criminalize their members.

Another strategy the Turkish government has employed to block civil society is the Law on the Prevention of the Financing of Weapons of Mass Destruction. This law, passed in

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December 2020, initially designed to honor its stated goal, was deformed into imposing, to quote Amnesty International's report on the subject⁹¹, "unnecessary and burdensome audits on non-profit organizations (NPOs); increases prison sentences and already high administrative fines for the breach of auditing obligations; provides for the removal of NPOs' executives and suspension of NPO activities, as well as the possible dissolution of NPOs for breaches of the law; and hinders NPOs' online fundraising activities". While the ban on ethnic-denominated parties and political organization is the main obstacle for Kurdish activist groups, this law is an extra layer of difficulty for civil society organizations that deal with minority-related issues.

C. Surveillance and Espionage

1. Spain's use of the Pegasus spyware

In Spain from April to May 2019 a total of 1,400 WhatsApp users were targeted by the spyware called Pegasus, a spyware sold by the Israeli company NSO Group.⁹² WhatsApp reported that more than 100 of its members attacked were journalists, activists, and government officials.

The messaging app launched a lawsuit against the NSO Group in the USA in 2020. The NSO Group claimed the spy-ware was bought by governments for the purpose of tracking down criminals, however the firm did not know how the software was being implemented.⁹³ Purchasing countries included Saudi Arabia, and Mexico.

In 2020, a joint investigation was launched between Guardian and El Pais, which revealed

that the speaker of the Catalan regional parliament, Roger Torrent and at least two others were targets for espionage.⁹⁴ WhatsApp confirmed these were from the 2019 attacks. Following this, the University of Toronto Citizens Lab began its own investigation into cases of political espionage, specifically those targeting Catalan leaders and activists.

While examining for evidence of Pegasus infections, a confirmed 63 people were targeted, with 54 infected.⁹⁵ The attacks occurred between 2017 to 2020, however Citizens Lab found an attack from 2015. It should be noted that the forensic tools used for detecting Pegasus infections were more compatible with IOS devices than Androids, so there might have been a higher number of targets and infections not found. The report found cases of direct attacks against Catalan members in the European Parliament (MEP).

This included Diana Riba (MEP ERC) who was infected on or around 28 October 2019, while Antoni Comin (MEP Junts), was infected between August 2019 and January 2020. Other cases were political as seen in the case of Jordi Solé, who was newly appointed as the MEP replacement for Junqueras for ERC. He was infected at least twice between 11 June and 27 June 2020 with a fake SMS from Spain's social security system.

Other cases included "off center" targeting which allows the attacker to gather information about the primary target through the infection of their family, friends, and other close associates. As seen within the targeting of President Puigdemont, as well 11 individuals including President Puigdemont own wife who were all affected from 7 October 2019 to 4 July 2020.

Pegasus infections were not only limited to Catalan government personal, but also civil society members of the ANC.

- Professor Elisenda Paluzie (ANC President, 2018 – 2022) was confirmed to have received 4 attacks and a confirmed infection. The attacks coincided with the demonstrations following the sentence of the Referendum trial in October 2019, and when she ran for reelection with ANC and online voting began in June 2020. Amnesty International's Security Lab confirmed the infection from Pegasus on or around 29 October, 2019.
- Jordi Sánchez (ANC President, 2015 – 2017) was confirmed to have received 25 attacks. The first attempt came as an SMS infection in 2015. While the others came between 2017 to 2020. The majority of the attacks coincided with his appointment as ANC President. On 20 April 2017, an attack came specifically when he met with Catalan civil society members and government officials. It was confirmed that he was at least infected four times between May and October 2017. The first 25 failed attacks and the four successful ones tried to find ballot boxes of the 1 October 2017 referendum.
- Sònia Urpí, an ANC board member, was confirmed to have been attacked twice and successfully infected once. The attacks coincide with her joining the ANC after she was chosen for the role on 13 June 2020. Both attacks took place after the elections during the week of 22 June 2020. Amnesty

International's Security Lab confirmed the infection from Pegasus,

- Jordi Domingo Ceperuelo, an ANC board member received attacks through WhatsApp in March 2019. The attacks coming after the ANC requested time and space to demonstrate at Plaça de Sant Jaume at the same time as the JUSAPOL (anti-independence police union).

Other attacks included self-determination activists.

- Arià Baye, a member of the General Board of ANC had one confirmed attack in March 2020. The attacks coincide with his meetings with candidates during elections for the General Board ANC and with members of the board of the Òmnium Cultural and of Poble Lliure (one of the parties that is a member of the CUP). Mr. Bayé who was 26 years old at the time received two attacks through Android which could not be traced.
- Jordi Baylina an IT expert who supports the Catalan cause, received at least 26 infection attempts, and 10 times infected between October 2019 and July 2020. He was the most attacked target of the #CatalanGate Attacks included an SMS that masqueraded as a boarding pass indicating the operator had access to Baylina's Passenger Name Record (PNR), as it showed part of his tax identification code. Additionally, the infection attempts also pretended to be tweets from the Swiss telecom provider Swisscom, and

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European NGO European Digital Rights.

Spain's National Intelligence Centre (CNI) confirmed that 18 out of the 63 members were spied on with judicial approval. However, the victims haven't had access to this information as it's deemed secret under the "Spanish Law on Official Secrets". Additionally, the CNI, which is overseen by the supreme court, insisted it operated "in full accordance with the legal system, and with absolute respect for the applicable laws".⁹⁶ In March 2022, the CNI Chief, Paz Esteban was dismissed from her post, and would be replaced by another female intelligence veteran Esperanza Casteleiro.

Catalan regional President Pere Aragonès, who was also infected, stated the Catalan government demanded maximum transparency, explanations, assumptions of responsibilities and guarantees of non-repetition. He welcomed the establishment of a European Parliament inquiry committee on Pegasus; however, the establishment of a similar committee on the Spanish congress has been blocked by the majority of the political parties in Madrid.

Legal Aspect of Pegasus within the EU framework

The European Parliament established an inquiry committee on April 19th, 2022, investigating the use of Pegasus and other surveillance spyware⁹⁷. The committee is further investigating whether Pegasus has breached EU law and violated fundamental rights. Rights in question are primarily the right to privacy (Article 8 ECHR) and freedom of expression (Article 19 UDHR), but the intrusiveness of Pegasus can further infringe other fundamental rights, such as the right to

health, right to religion, and the right to freedom of assembly and association⁹⁸, with the latter having a special protection under the rule of law. Further, intrusive practices, which Pegasus permits are endangering the rule of law and principles of democracy.

Whereas within the European Union and its Member States, national legislation regulates targeted surveillance, the use of it for law enforcement must comply with Union primary and secondary law, and thus with the Charter of Fundamental Rights, ePrivacy Directive and Law Enforcement Directives⁹⁹. Although the EU Charter of Fundamental Rights Article 52(1) states, that terrorism and organized crime may justify fundamental rights to be limited, a threat of such immense must be genuine and present or foreseeable and can pass the proportionality and necessity test¹⁰⁰. The European Data Protection Supervisor notes, that an individual's phone targeted with Pegasus without any features disabled, would allow an intelligence agency to have full access to personal data, and therefore deprives the individual of their right to privacy¹⁰¹. Spyware such as Pegasus affects more than just the communication aspect but encompasses a person's whole life. Although certain features of Pegasus can be disabled and therefore might be able to pass the assessment, only serious threats such as an "imminent terrorist attack" would justify the use of Pegasus. This is however according to the EDPS rare and would still not justify using Pegasus systematically¹⁰². No serious threat to national or public security has "apparently" been present nor foreseeable in so far, according to the European Parliament¹⁰³. Although states have a large "measure of discretion" to evaluate national security threats, the European Court of Human Rights will need to see reasonable grounds for

the combating and evaluation of such threats¹⁰⁴. Regular provision of Pegasus would further not be compatible with the legal order of the EU.

In the case of Spain, the surveillance of 18 Members of the Catalan independence movement was contentiously extended from the first three months of surveillance and justified it as an opposed threat to the territorial integrity of Spain and in accordance with the Spanish constitution¹⁰⁵. No justification or explanation has been given for the rest of victims.

The Council of Europe notes in its June 2022 report¹⁰⁶ about Pegasus and its impacts on human rights, that Convention 108+ is the only legally binding international treaty, which sets basic principles for “data protection, safeguards for individuals, and supervision over the data processing operations, which are particularly important in the context of Pegasus”¹⁰⁷.

Nonetheless, so far there is no proper governing for the kind of spyware Pegasus falls under, and the legal authority of spying. More so, governments who use Pegasus need to be transparent in the use and scope of the spyware and surveillance. Pegasus in its intrusiveness calls for a proper legal framework, that regulates and protects human and fundamental rights and their infringements. Further, the trade and sale of these kind of spyware tools need to be limited within the EU.

2. Iran’s use of spyware against the Kurdish community

The Islamic Republic of Iran has dedicated a great deal of resources geared towards collecting information on individuals, in its attempts to monitor minority groups. Specifically, Iran has increasingly become more prominent in deploying cyber-espionage

against minorities. As illustrated in 2020, when malware was detected in a driving license application in Sweden.¹⁰⁸ When the application is installed, it can record conversation, locations, and browser history. Both ethnic and religious minority groups were the prime targets for the application.

Similarly, according to the BBC, Iran launched over two surveillance operations into cyberspace, targeting over 1,000 people. The first operation was called Domestic Kitten or APT-50, and tricked people into downloading malicious software on their mobile phones, resulting in over 1,200 victims being targeted. The second group, known as Prince of Persia, was stated to have spied on people’s home and work on computers in 12 countries.

Domestic Kitten has been active since 2016, collecting sensitive information via Android users’ phones through SMS messages, call logs, photos, videos, and location data on the device along with voice recordings.¹⁰⁹ In 2020 it was reported that Checkpoint, a protection software for phones, reported the spy-ware used a wide variety of cover apps, counting VIPRE Mobile Security (a fake mobile security application), Exotic Flowers (a repackaged variant of a game available on Google Play), and Iranian Woman Ninja (a wallpaper app), to distribute a piece of malware called FurBall.

Once installed, Furball granted itself permission to execute the app automatically every time the computer or phone was started, and proceeded to collect browser history, hardware information, files on the external SD card, and periodically ex-filtrate videos, photos, and call records every 20 seconds.¹¹⁰ According to BBC, the Domestic Kitten operation was detected to have run at least 10 campaigns in 2017 and has since

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affected 600 successful infections including the phones and computers of the Kurdish ethnic minority.

International response has condemned the human rights situation in Iran. According to the UN General Assembly in 2015 the standards of the country in terms of the right to life, the freedom from torture, freedom of expression, freedom of association, religious freedoms, women's rights, and minority rights are very low. This finding remains true as the Kurdish population remains subjected to discriminatory policies in the areas of education and linguistic freedoms.

The Kurds remain exposed to arbitrary killings and major violations of freedom of association and assembly.

D. Prohibiting or limiting protests and other forms of political expression

The right to freedom of expression, association and assembly have become increasingly limited for many peoples around the world advocating for the right to self-determination. The outright prohibition or the limitation of demonstrations and other forms of political expression, such as T-Shirts with political slogans or pamphlets containing information about the right to self-determination, represents a troubling trend increasingly faced by unrepresented communities around the world.

Social protests are an integral element of democratic societies, which is protected by a constellation of rights and freedoms. The right to freedom of expression is strongly interconnected with freedom of assembly and the right to protest. Assemblies, which can be defined as any intentional and temporary

congregation of a group of people in a private or public space for a specific purpose, “play a vibrant role in mobilizing the population and in formulating grievances and aspirations, facilitating the celebration of events and, importantly, in influencing States’ public policy.”¹¹¹

The IACHR notes that while protests and demonstrations in general are associated with rallies or marches in public spaces, they can take different forms and modes—as recognized by the various international human rights protection systems, they may take different forms, such as roadblocks, vigils, strikes, sit-ins, peaceful occupation, as well as parades, conferences, and sporting, cultural, artistic, and other events.¹¹²

The criminalization of social protest and other forms of political expression leads to a disconcerting shrinking space for civil society in many of the cases UNPO deals with.

1. Spain’s “Gag Law”

Spain’s restrictions put on the right to freedom of expression and of peaceful assembly in the context of demonstrations have worsened in recent years.

The right of peaceful assembly in Article 21 of the Constitution explicitly states that the exercise of the right does not require authorization, but that the authorities should be notified in advance of assemblies taking place in public areas.

Since 2011 Amnesty International tracked several protests in Madrid and Barcelona, receiving several accounts of administrative penalties imposed on protesters, ranging from \$300 to \$1,500 euros.¹¹³ Amnesty observed that while most protests tracked have been peaceful

in nature, only during a few events specific groups or individual demonstrators have been involved in violent incidents. However, despite the peaceful nature of many of these protests, there were frequent allegations of excessive use of force and ill-treatment by members of the law enforcement bodies responsible for policing them, and a lack of proper internal and judicial investigation of complaints made. There have also been reports of aggressive conduct by police towards journalists and photographers covering demonstrations, sometimes involving the destruction of their equipment and their arrest.¹¹⁴

In 2013, the Secretary of State for Security, Francisco Martinez, announced that the Ministry of the Interior was going to give “clear” instructions to the National Police to prohibit demonstrations within 300 meters of the houses of public officials and politicians.¹¹⁵

‘In the case of demonstrations in Spain, for example, the security forces are authorized to search equipment used by journalists and reporters (still and video cameras for example), which are necessary tools if they are to be able to document and denounce abuses carried out by the police.’¹¹⁶

In 2020, the International Trial Watch (ITW), stated that the Catalan independence case is one of the major examples of the restrictions placed on civil society in Spain, because it shows that “the criminal code has been used to repress peaceful protests. The European Civic Forum states the jailing of the Catalan leaders could hold a domino effect in Europe.”¹¹⁷

In 2015, parliament amended the Law on the Protection of Public Security – commonly known as the “gag law” (*ley mordaza*) – and introduced new limitations on protests and

administrative fines targeting those participating in public assemblies. The authorities then imposed tens of thousands of fines on protesters, human rights defenders and journalists for conduct that is protected by the rights to freedom of expression and peaceful assembly.

The law seeks to limit protests by laying out strict guidelines on when and where they can take place and penalizing offenders with steep fines.¹¹⁸ The fines vary in amount depending on the offense caused, for example failure to notify authorities about demonstrations in public spaces or veering off the approved itineraries of the demonstrations could lead to 600 euros in fines. Those that were found to have caused “serious disturbances of public safety” near parliament and Spain regional government buildings were fined up to 30,000 euros.

The Spanish Penal code continued to be used to target political and artistic expression, especially online. In 2020, the Platform in Defense of Freedom of Information (PDLI) stressed during a conference with the Congress of Deputies, that “when legislating on freedom of expression they cannot ignore the international agreements to which Spain is subject”. Moreover, the PDLI stated Spain’s regulations failed to comply with international obligations on several grounds.¹¹⁹

2. Excessive use of force

The Human Rights Watch received allegations of unjustified use of force by police on 1 October 2017. When reviewing the video, photo, and medical evidence submitted from Girona and Barcelona found hundreds left injuries from their encounters with the police. On 2 October 2017, it was reported from

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Catalonia's Health Department that an estimated 893 people reported injuries to the authorities.¹²⁰

In Girona, witnesses at the Col·legi Verd primary school polling station reported around 9 am on 1 October 2017, the national police used batons and shields to charge repeatedly at people who had linked arms to halt them from entering through the school gate. They reported being hit on their heads, arms, legs, and torsos all without the police issuing any warning.¹²¹

In Aiguaviva, residents witnessed about 50 national police enter the village where a crowd of 70 or 100 people assembled outside of the polling station in the village hall. One villager, whose name remained redacted due to fear of reprisals, stated he was struck by police while filming the authorities taking the ballot boxes from the hall. At the same time in Fonollosa, six residents, three of whom were injured also reported police seizing their ballots and boxes.

On 3 October 2017, Amnesty International confirmed that members of the National Police force's Police Intervention Unit (UIP) and Civil Guard officers used excessive and disproportionate force against demonstrators at the entrances to polling stations.¹²² The security forces were allegedly acting on the order of the High Court of Justice of Catalonia (TSJC), which ordered them to prevent the holding of the referendum. It was reported that in total 2,315 polling stations of which 400 were shut down by a court order.

The Madrid government dispatched a total of 6000 officers to Catalonia, during the 2017 referendum. Those involved in the operation received medals and other rewards, including the police officers who were under

investigation in Catalonia for using excessive force.¹²³

The Spain Interior Minister Fernando Grande-Marlaska, revealed that the special deployment of thousands of Civil Guards and state police during the 2017 referendum cost the state \$87 million euros.¹²⁴

The Spanish government insisted the actions taken by the police were appropriate and proportionate to the objective of ensuring compliance with the law and rights of all citizens, and that the actions were not directed against citizens or their ideas. Nevertheless, on 6 October the Spanish government's representative in Catalonia apologized over the violence.¹²⁵

On 14 October 2019, it was reported that authorities fired foam bullets and used batons against thousands of protesters in the Barcelona airport, protesters fought back by throwing objects and spraying fire extinguishers and breaking windows during the clashes.¹²⁶ On 16 October 2019 several thousand protesters gathered to demonstrate against the sentencing of the nine Catalan leaders and were charged by riot police that fired foam projectiles.¹²⁷

The Amnesty International and Omega Research Foundation produced a joint report on the misuse of police batons around the world. The research notes 188 incidents in which police misused batons and other police weapons, including cases where the actions carried out with batons could constitute as torture and ill-treatment.¹²⁸ In the case of Spain, the widespread use of weapons by police was seen as unnecessary and excessive.

In a recent court ruling it was found that the violence displayed by Spanish law enforcement

during the 2017 referendum was not legitimate.¹²⁹

Spain holds the obligation to respect the right to life and the right to self-integrity of any person under its jurisdiction under Articles 6 and 7 of the ICCPR. Specifically, Under Article 7 notes that “no one shall be subjected to torture, inhuman or degrading treatment or punishment.”¹³⁰ The sediment is echoed in Articles 2,3, and 8 of the ECHR.

The positive obligations that exist under these provisions require that the allegations of excessive use of force can amount to cruel and inhuman or degrading treatment or torture. Thus, the state needs impartial and effective investigations into these cases.

3. Vietnam’s repression of political expression

The Khmer Krom people, represented by the Khmer Kampuchea-Krom Federation (KKF) at the UNPO, have inhabited the south-western part of the Indochinese peninsula for thousands of years.

The Government of Viet Nam systematically cracks down against its people's right to freedom of assembly and expression, and against the Khmer-Krom. The inability to protest and bring to light the discrimination and repression suffered by the Khmer-Krom facilitates the violations outlined in this report while also causing peaceful protesters to suffer violence at the hands of government forces. This contravenes the right to freedom of opinion and speech as guaranteed in Viet Nam’s Constitution and in international human rights instruments.

National security provisions in Viet Nam's Penal Code and in press and publication laws

are also used to prohibit and criminalize peaceful speech and assembly. For instance, Vietnam’s penal code includes crimes related to: “activities aiming to overthrow the people’s administration” (penal code article 79, penalty up to death sentence); “undermining national unity policy” (article 87, penalty up to 15 years in prison); “conducting propaganda against the State of the Socialist Republic of Vietnam” (article 88, penalty up to 20 years); “disrupting security” (article 89, penalty up to 15 years); and “abusing the rights to freedom and democracy to infringe upon the interests of the state, the rights and interests of individuals” (article 258, penalty up to 7 years).

Peaceful activism and expressions of dissent are seen by the Government of Viet Nam as a threat to national unity. Disproportionate responses, as detailed in the following case studies, clearly illustrate the Government of Viet Nam’s intention to intimidate minority activists and instill a culture of fear.

In May 2017, a Khmer-Krom youth living in the Preah Trapeang province (renamed to Tra Vinh) was interrogated by the police for wearing a T-shirt with the slogan “Revitalization of our Khmer-Krom Identity through the implementation of UNDRIP” designed by overseas Khmer-Krom youth.¹³¹

On May 25th, 2021, one Khmer-Krom activist who was wearing a T-shirt with the logo of the Sustainable Development Goals (SDG) was detained by the Vietnamese police and the agents confiscated 150 copies of the UN International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the Declaration on the Rights of Indigenous People (UNDRIP).¹³²

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On 29 March 2021, Vietnamese authorities raided the printing house of a Khmer Krom man, Thach Sang who had created T-shirts declaring the ethnic group's support for International Women's Day on March 8, based on a customer's order.

In April 2021, over 100 police officers were reported to have raided the home of indigenous Khmer-Krom youth activist and human rights defender Mr. Duong Khai, without a warrant, and confiscated 100 copies detailing the content of the UNDRIP, his cell phone and his computer. The books were not returned, and he was charged with publishing without permission and tax evasion.¹³³

On 22 June 2021, in response to the incident, UN Special Procedures issued a Joint Allegation Letter to Viet Nam expressing serious concern over the actions of the police authorities and raise particular concern for its "chilling effect on any expression, by all those, including human rights defenders, who draw attention to minority and indigenous people's issues in the country."¹³⁴

Reports also note that three Khmer-Krom youths were fined for up to 300 USD for posting comments on social media about their indigenous history while others have been fined for wearing shirts marking the anniversary of the loss of the Khmer territory to Viet Nam.¹³⁵

Freedom of assembly remains, overall, tightly controlled in Vietnam. Organizers trying to establish unions or workers groups face harassment, intimidation, and retaliation from authorities and employers.¹³⁶ As authorities require approval for public gatherings and systematically refuse permission for meetings, marches, or public gatherings they deem to be

politically unacceptable. This expands to the gatherings of religious institutions as well.

Since 365 BC the Khmer Krom have sustained a strong belief in Theravada Buddhism. However, they have not been allowed to gather nor worship without interference from the government.¹³⁷ As the state forced most of the Khmer Krom Buddhist monks to join the Patriotic United Buddhist Association (PUBA - Hội Đoàn Kết Sư Sãi Yêu Nước). The Vietnamese government uses this "association" to control and degrade the way the Khmer-Krom practice their religion.

In 2007 Khmer Krom monks conducted a series of peaceful rallies and marches in Phnom Penh calling for the release of imprisoned monks in Vietnam. In the past Khmer Krom demonstrated in Cambodia calling for the return of "Kampuchea Krom" to Cambodia, written appeals, and speeches by the monk protesters during 2007 called for Vietnam to respect the rights of indigenous people, resolve Khmer Krom farmers' land conflicts, and release Khmer Krom monks imprisoned in Vietnam.¹³⁸ Which were followed by a series of violent attacks on Khmer Krom monks throughout 2007.

In 2019 KKF published a shadow report highlighting contradictions to the government's report (CCPR/C/VNM/3). According to paragraph 192 of the Vietnam report "citizens have right to assembly, right to association, and right to demonstration (Article 25). As well paragraph 200 mentions that 'associations in Vietnam develop in different sizes, scales, and capacities. In terms of quantity, there are about 67,627 associations in Viet Nam, of which 506 associations operate nationwide'.¹³⁹ However, KKF pointed out that the government failed to

mention that these associations have to register to work under the control of the government.

As well, the government rejected the recommendations made by member states, during the second Cycle of the Universal Periodic Review (UPR) held on 5 February 2014, to allow the people in Vietnam to form independent associations freely. As of today, the Vietnamese government does not allow Khmer-Krom to form an association.

3. Indonesia's Gagging of West Papuan Freedom of Expression

Since 1 May 1963, the Indonesian government has laid claim to the western half of the Papua Island, known as West Papua, due to its status as a part of the Dutch East Indies colonial empire. By signing what is known as the New York Agreement, the Netherlands transferred the administration of the territory to a United Nations Temporary Executive Authority which in turn transferred the administration to Indonesia in accordance with the Treaty.

Despite provisions for Papuans to have the right to self-determination, the long history since then of West Papuan self-government has been trampled upon by the Indonesian central government. Due to West Papua's rich natural resources the Indonesian government has made concerted efforts to repress West Papuan organizations and ensure activists have no real platform to express their right to hold a vote. The cases of Benny Wenda¹⁴⁰ and Hermann Wainggai¹⁴¹, two prominent leaders of West Papuan self-determination movements who were forced into exile, shows that the Indonesian government has a record of using torture against self-determination activists in West Papua alongside a strong militarized response.

On July 6, 2022, the Indonesian government passed amendments to the Criminal Code that civil society actors described as a curtailment of civic freedoms¹⁴². Included in the amendments are new Articles that make defamation and insults against the (central) government a criminal offense, and the curtailment of spontaneous peaceful protest and freedom on assembly.

E. Misuse of Criminal Cooperation and Extradition Agreements

The use of bilateral and multilateral criminal cooperation agreements between countries can amount to another tool of oppression used against self-determination activists. Cooperation agreements, including the Interpol Red Notice system and bilateral extradition treaties, enable governments to target dissidents and diaspora who have moved abroad, often for the purpose of seeking safety and protection.

The UNPO have documented many instances of governments seeking to exploit extradition agreements in order to obtain and punish self-determination activists living abroad. These agreements create opportunities for repressive regimes to target minorities abroad via legal mechanisms with the cooperation of the host countries institutions.

Some countries, however, will not extradite to other jurisdictions on with capital punishment or life imprisonment under any circumstances, or unless the requesting authority pledges not to impose those penalties.¹⁴³ Nevertheless, the requesting country might bypass these terms by lying about the punishments those being extradited might face. Once returned

underneath their jurisdiction the refugees will face harsh conditions, torture, and other human rights abuses. This directly violates the provisions laid down within the cooperation agreement.

1. Spain's Misuse of the European Arrest Warrant

After the 2017 referendum, former President Puigdemont and four other members of the Catalan government fled **Spain**, following authorities announcing they would be prosecuted on charges of sedition, rebellion, and embezzlement. On 4 November, a Spanish judge issued a European Arrest Warrant (EAW) for the five, before it was withdrawn by the Supreme Court later in December.¹⁴⁴

In March 2018, after the reactivation of the EAW, German authorities arrested Puigdemont under the EAW, however they refused to extradite him on the charge of rebellion as its equivalence in German law required a violent attempt against the existence or the constitutional order of Germany, which could not be established.¹⁴⁵ The Spanish Supreme Court therefore dropped the extradition request, as Puigdemont would only be able to stand trial in Spain for the lower charge of misuse of public funds which carried the maximum sentence of 12 years, while rebellion carried 30 years.¹⁴⁶

Similarly, Belgium rejected Spain's extradition request in May 2018. In October 2019, after the sentence that condemned 9 leaders for sedition, a new EAW was issued. In January 2020 the Belgium justice suspended the EAW against Puigdemont and Comin due to their immunity as members of the European Parliament. After losing their immunity in 2021 upon a vote by

the European Parliament, the European Court of Justice reinstated it in May 2022.¹⁴⁷

The new EAW issued after the sentence suffered a major blow when the Brussels Appeals Court rejected the extradition of former Catalan regional minister, Lluís Puig, who didn't have immunity as he wasn't a member of the European Parliament.¹⁴⁸

The Spanish judge overseeing the case requested in January 2021 clarification from the European Court of Justice (ECJ) over whether the decision to deny handing Lluís Puig over to Spanish authorities was lawful.

Spain re-issued the arrest warrant in order to request Puigdemont's arrest in Sardinia, Italy at the Alghero Airport.¹⁴⁹ Italian authorities ordered for him to attend a court hearing on 4 October before his release, however suspended proceedings until after ECJ ruling.¹⁵⁰

The European Commission sided with the arguments made from the Spanish government that the extradition should be made possible between EU-member states, provided that there are no "systematic failures within the Spanish rule of law".¹⁵¹ However, the legal teams of the Catalan leaders strongly argue there are indeed widespread issues with Spain's judiciary, as demonstrated above in Section 2.

Indeed, according to the EU Justice Scoreboard of 2019 Spain was among the four EU countries with the worst judicial independence among its citizens.¹⁵² The extradition of former Catalan leaders and activists remain dangerous as judicial independence remains a major issue for Spain. As seen under Article 127 of the law on the judicial power, judges are appointed by the General Council of the Judiciary, which allows the appointment of the judges to be based on political reasons. The Supreme Court

is therefore defined by the judges' political beliefs and biased against the Catalan plight.

Moreover, in May 2019 the United Nations Working Group on Arbitrary Detentions raised concern that the trial of the Catalan politicians was not fair in its form, finding that the victims right 'to be judged by a competent and impartial court was unobserved'.¹⁵³ Freedom house's 2021 report on Spain also found that regarding civil and criminal matters, authorities have shown flaws within the defendants' full due process rights during trial in high-profile cases related to self-determination movements.

The extradition of former Catalan leaders and activists would lead to a wave of arbitrary detentions and unfair trials as the judgments will not be based on facts but on their political identities alone. As the state continues to prosecute Catalans under Article 155, leaving them without the choice of appeal.

2. Spain's cooperation with China

As well as using extradition as a tool of oppression to target the Catalan self-determination movement, Spain has also been complicit with other repressive regimes, namely China, in the extradition of Taiwanese nationals.

For example, in December 2016, a joint Spanish-Chinese operation led to the arrest of 219 Taiwanese nationals living in Spain for alleged criminal activity.¹⁵⁴ Upon China's request, Spain extradited 94 of the Taiwanese citizens to Mainland China to face prosecution. This was the first time an EU country extradited Taiwanese criminal suspects to China, instead of their homeland.

Considering legitimate and serious concerns about fair trial rights and long-standing fears

about torture or ill-treatment in China, human rights organizations heavily criticized Spain's decision to accept Beijing's request.

The Taiwan government stated the extradition infringed upon the rights and interests of their people and ignored the EU emphasis on human rights.¹⁵⁵ The extradition treaty between Spain and China was signed in 2005, as it is one of the only EU countries that follows the "One China Policy".

In May 2018, the UN Office for the High Commissioner for Human Rights called upon Spain to halt the extraditions, stating that "the ruling clearly contravenes Spain's international commitment to refrain from expelling, returning or extraditing people to any State where there are well-founded reasons to believe that they might be in danger of being subjected to torture."¹⁵⁶

On 1 December 2021 Safeguard Defenders reported that Beijing began pressuring foreign governments to extradite Taiwan nationals to China, as an effort to undermine Taiwan's self-governance. Furthermore, it claimed at least 610 Taiwanese people were extradited or deported by foreign governments to China instead of Taiwan between 2016-2019 mostly from countries in Asia but also from Spain, Armenia, and Kenya.¹⁵⁷ The transfers often took place after the Taiwanese were denied access to consular support or communication from Taipei and constant denial of contacting Taiwanese officials or family members once in China.

3. China's extradition attempts against Tibetans abroad

Between 15,000 and 20,000 Tibetans inhabit Nepal, with the population consisting of refugees and their relatives that arrived in the

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country following the Dalai Lama's escape to India in 1959, in addition to new immigrants and refugees coming from Tibet or returning from India.¹⁵⁸ In 1989, however the government began barring new arrivals from crossing the border but allowed those already in the country to remain. Of the Tibetans living in Nepal, at least 12,000 reside in the Kathmandu's Boudhanath district. The rest live in Tibetan settlements set up mainly in the 1960s and 1970s in Pokhara and other towns.¹⁵⁹

Nepal adheres to the "one-China policy" and has repeatedly stated it will not allow any anti-China activity within the state, especially from the Tibetan community.

On 31 May 2003, the UN High Commissioner for Refugees expressed serious concerns about the fate of 18 Tibetan asylum seekers that were deported to China from Nepal.¹⁶⁰ Despite appeals from the UNHCR and other human rights groups the 18 (originally from a group of 21) that arrived in April 2003 were deported from Nepal. The group included eight unaccompanied minors, the youngest being around 13.

In April 2007, the UN Committee Against Torture expressed concerns about cases of *refoulement* of Tibetan asylum-seekers in Nepal.¹⁶¹ Under, Article 3 of the Convention Against Torture, the principal of *nonrefoulement* guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment and other harms.¹⁶² The Committee also recommended that Nepal enact legislation aimed at prohibiting the return of Tibetans without appropriate legal procedure. The procedure conducted would include providing the Committee information on the number of cases of extradition, removal, deportation,

forced return and expulsion that have occurred since 1994, and information on cases where return was not affected by fears of reprisals.

During the 2011 Universal Periodic Review, Nepal stated it did not allow for its territory to be used against bordering countries nor any country and that anyone found in violation of the immigration laws or other laws would be dealt with according to the laws of the land, that there were no forceful deportations.¹⁶³ However, the government refused to accept the recommendation by the U.S to protect refugee populations by allowing them to register in Nepal and refrain from deporting them to China.

In 2018, both China and Nepal issued a joint statement revealing that both countries agreed to negotiate the Treaty on Mutual Legal Assistance in Criminal Matters and Treaty on Extradition, in order to strengthen cooperation on the administration of border areas and fight against illegal border crossing and transnational crimes.¹⁶⁴ China and Nepal also signed the Mutual Legal Assistance Treaty on criminal matters,¹⁶⁵ which was seen as the harbinger for the extradition agreement that China remains firm on getting.

Article 26 (2) Boundary Management System Agreement states "The boundary representatives or competent authorities of both sides shall investigate the cases of persons found while crossing [the] border illegally, ascertain their identities, cross border facts and reasons as soon as possible and hand them over to the side where they stayed before crossing the border within seven days from the day when they were detained".¹⁶⁶ Thus, Tibetans who flee from Chinese persecution are at risk to be returned without legal protection from Nepal. While Article 27 allows frontier

personnel the ability to use weapons against people crossing the borders.

The Treaty on Mutual Legal Assistance on Criminal Matters allows for intervention of China, specifically in matters related to those Tibetans that voice their political views or cultural identity.¹⁶⁷ As well, China can now state a particular Tibetan refugee has committed a crime in China, and that he or she must be kept under surveillance, allowing Tibetans to be targeted.¹⁶⁸

At the same time, Nepal has also significantly increased its surveillance of Tibetan refugees since 2008. The government signed intelligence-sharing agreements with China, operationalized border security cooperation, partially enforced a ban on Tibetan public demonstrations, and deployed armed police in

Tibetan neighborhoods on politically sensitive dates.¹⁶⁹

The agreements counter obligations that Nepal holds under international law, as above-mentioned Article 3 of the Convention Against Torture, as well General Comment No. 20 of the Human Rights Committee and General Comment No. 6 of the Committee on the Rights of the Child. During the 14th Meeting of Nepal-China Bilateral Consultative Mechanism, China expressed reservations about the US Under Secretary of State Uzra Zeya's visits to at least two Tibetan camps in Nepal.¹⁷⁰

In addition to Tibet, China has consistently used sedition laws in places like Xinjiang Autonomous Region against Uighur civilians, as well as in Hong Kong¹⁷¹.

Conclusion

The handling of the Catalan national movement's push for self-determination by Spanish authorities has shown to have violated core human rights principles, mostly relating to the ICCPR, to which Spain is a signatory. Basic freedoms that are essential for a democratic society such as freedom of speech, freedom of assembly, and the right to privacy.

More worrying still is the replication of these practices across the world in order to counter self-determination movements. Not only in Spain's status as a democracy tarnished by the events both leading up, during and following the October 2017 referendum, but it now serves as a model for other more authoritarian states looking to justify their actions against self-determination activists.

The Unrepresented Nations and Peoples Organization's founding principles believe that the narrowing of such space for the peaceful self-determination movements such as the one in Catalonia can only lead to more radicalization and conflict on both sides. We believe that international actors should convene to set limits to the ability of prosecutors and judges to use broadly defined charges, set standards on the selection of judges, set standards on the judicial oversight of the intelligence services and reform policing of acts of civil disobedience or (even symbolic) declarations of independence.

Above all, the international community desperately needs to reaffirm the right to self-determination's place the international human rights conventions, engaging in standard setting that will guarantee, at a minimum, the full

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protection of civil and political rights to self-determination movements.

In addition to legal changes, political ones must happen too. If elected officials in the executive branches are engaging in the use of extralegal tools to counter a self-determination movement, then behind it is a political assurance that, should

they be exposed, little political repercussions would happen. The concept of the overall acceptance of self-determination of a people as a collective right and its decriminalization and normalization as a political stance is a step towards the right direction in terms of strengthening democratic norms across the world.

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