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Submission by: Front Line Defenders – the International Foundation for the Protection of Human Rights Defenders

Related to: Spain

UPR Session: 35th Session of UPR Working Group (January 2020)

Submitted: 17 July 2019

Front Line Defenders (www.frontlinedefenders.org) is an international NGO based in Ireland with special consultative status with the Economic and Social Council of the United Nations (ECOSOC). Founded in 2001, Front Line Defenders has particular expertise on the issue of security and protection of human rights defenders and works to promote the implementation of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) adopted by General Assembly resolution 53/144 of 9 December 1998. In 2018 Front Line Defenders was awarded the United Nations Prize in the Field of Human Rights.

The following submission has been prepared by Front Line Defenders – The International Foundation for the Protection of Human Rights Defenders based on research carried out by this organisation and information received from independent human rights defenders in Spain from January 2015 to July 2019.

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Introduction and key concerns

1. This submission focuses on the situation of human rights defenders (HRDs) in Spain and covers developments from January 2015 to July 2019.
2. Front Line Defenders identified several ongoing issues in relation to the defence of human rights in Spain:
 - (a) **Restriction of the HRDs' freedom of expression and peaceful assembly**, including in the context of Catalan crisis;
 - (b) Criminalisation and stigmatisation of **human rights defenders working on the rights of migrant people**;
 - (c) Gender-based violence and online harassment against **women human rights defenders (WHRDs)**;
3. In the course of the period under consideration, Spain adopted a new Organic Law 4/2015 on Citizen Security and reformed its Criminal Code. According to the UN experts, both of these novelties severely “undermine the rights of assembly and expression in Spain”¹.
4. A number of social and political factors triggered the rise of the Catalan independence movement, and subsequently escalated into a crisis in September 2017. The crisis was triggered by the celebration of a referendum for independence of Catalonia on 1 October 2017 despite the decision of Constitutional Court to suspend it. The reaction of the authorities encompassed a number of measures that curtailed freedom of expression and of the press, including detention, fines and prosecution of human rights defenders and protesters². Human rights defender **Jordi Cuixart**, President of **Ómnium Cultural**, has been held in pre-trial detention for the past year and nine months and is facing up to 17 years of prison on charges of “rebellion”, in connection with the promotion of peaceful demonstrations in Catalonia³.
5. HRDs reported the extensive application and broad interpretation of terrorist offences resulting in the criminalisation of human rights defenders, the closing of media outlets, outlawing associations and political organizations and prohibiting public events. This lax interpretation of “terrorism” has been denounced by various international human rights organizations. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism denounced in his 2008 report, after his mission to Spain, that “the vagueness of certain provisions on terrorist crimes in the Spanish Penal Code carries with it the risk of a “slippery slope”⁴. Under pending trial know as “summary 11/13”, 47 people including lawyers, therapists, mediators, activists and family members of prisoners defending the rights and providing health and legal assistance to individuals imprisoned in connection with the Basque conflict are being prosecuted with charges of “membership of a terrorist organisation”, “financing of terrorism” and “glorification of terrorism”, which entail prison penalties of between 11 and 20 and a half years.

1 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15597>

2 <https://www.frontlinedefenders.org/en/statement-report/spain-work-human-rights-defenders-must-be-respected-amidst-conflict-over-referendum>

3 <https://www.frontlinedefenders.org/en/case/jordi-cuixart-pre-trial-detention>

4 Parr. 52 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/173/74/PDF/G0817374.pdf?OpenElement>

Developments since previous UPR cycle

6. During the last UPR cycle Spain accepted one recommendation from Serbia directly referring to the cooperation with human rights defenders and the creation of a favourable environment for their work. However, Front Line Defenders observed the adoption of restrictive legislation, curtailing the freedom of expression and peaceful assembly, harassment, stigmatisation and violence against HRDs in the country in the given period.

7. Although Spain accepted 28 recommendations regarding gender equality, it failed to adhere to these commitments in full. Since January 2015, WHRDs in the state reported a lack of protection of women's rights and increase in gender-based violence and aggression both online and offline.

8. The state accepted 54 recommendations regarding equal access to human rights for migrants, asylum-seekers, foreigners and representatives of ethnic minorities. However, the Spanish government has been criminalising the work of the HRDs working to protect the rights of migrants. In November 2017, migrant rights defender **Helena Maleno** was charged with promoting illegal immigration and migrant-smuggling in Morocco after Spanish police handed her police case file over to the Moroccan authorities⁵.

9. Spain also accepted six recommendations in connection to freedom of peaceful assembly. However, HRDs reported restrictions on this freedom through extensive application of administrative fines for disobedience and disturbing public order, detentions, judicial harassment and the adoption of restrictive legislation. In April 2015, the Law on Citizen Security was adopted despite the severe criticism from civil society; the law significantly undermines the rights of assembly and expression in Spain as noted by UN experts⁶.

(a) Restriction of freedom of assembly

10. The Spanish government has been employing the legal framework to restrict freedom of peaceful assembly. In April 2015, the Law for the Protection of Public Security (Ley Orgánica para la Protección de la Seguridad Ciudadana) was adopted. This law established a notification-based procedure for peaceful protests introducing fines for demonstrations with no prior notification. The law also prohibits demonstrations outside "vital infrastructures" (i.e. Congress building, Senate or Legislative Assemblies) with fines of up to 300.506,05 EUR. These provisions significantly restrict the right to peaceful protest, which is one of the basic tools available to HRDs for attracting public attention to the issues they are working on. The law also prohibited the dissemination of "photographs of police officers and state security bodies that are deemed to endanger them", which affects the work of HRDs monitoring human rights violations during the protests, in particular excessive use of force. In parallel with the above law, the reformed Penal Code introduced the vaguely defined concept of "large gathering" as an aggravating factor of a crime. Law enforcement authorities have relied extensively on these new provisions to fine protesters. According to data published by the Ministry of the Interior for the period July 2015 - December 2016, a total of 285,819 sanctions were applied leading to fines of 131,470,206 EUR.

11. Freedom of peaceful assembly was further restricted in the context of Catalan crisis and the independence referendum held on 1 October 2017. Some municipalities in Catalonia adopted blanket bans on any forms of demonstration both for or against the referendum. As documented through the work of human rights observers of the

5 <https://www.frontlinedefenders.org/en/statement-report/spanish-state-must-urgently-uphold-helena-malenos-and-caminando-fronteras-right>

6 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15597>

#SomDefensores campaign⁷ and Amnesty International⁸, as well as through numerous videos, photographs and testimonies,⁹ the National Police and the Civil Guard used excessive and unnecessary force against demonstrators and people who remained peacefully in the polling stations and on the streets. **Jordi Cuixart**, president of Òmnium Cultural, a non-governmental organisation working to promote and preserve Catalan language and cultural heritage, has been in pre-trial detention since October 2017 on charges of “rebellion” in connection to the promotion of a peaceful demonstration in Catalonia on 20 September 2017 and the independence referendum¹⁰. The final hearing on the case was held on 12 June 2019 and the verdict remains pending. The human rights defender remains in detention despite the UN Working Group on Arbitrary Detention¹¹ and UN experts including UN Special Rapporteur (UNSR) on the promotion and protection of the right to freedom of opinion and expression¹², UNSR on the Situation of Human Rights Defenders¹³ and UNSR on minority issues¹⁴, calling on the authorities to refrain from charging the human rights defender and releasing him.

(b) HRDs working on the issue of migration

12. In the period under consideration, Spain curtailed the work of HRDs working to protect the rights of immigrants. Front Line Defenders received reports on the restriction of the right to monitor internment centres for foreigners (Centros de Internamiento de Extranjeros - CIE), granted to the migrants rights organisations by article 62 of LO 4/2000, including arbitrary restrictions to and threats to withdraw permits for visits in reprisal for peaceful and legitimate human rights work. In August 2017, human rights organisations Pueblos Unidos, Karibu and Sos Racismo Madrid denounced that the management of the CIE of Aluche had “unilaterally” restricted visits made by organizations defending the rights of immigrants.¹⁵

13. On 29 November 2017, migrants rights defender **Helena Maleno**, founding member of **Caminando Fronteras**, was summoned to appear before the Tangier Court of Appeals in Morocco, where she was charged with promoting illegal immigration and migrant-smuggling, which is sanctioned with up to a life sentence. The charges were based on police investigations that had been carried out by Spanish police since 2012, when she was alerting rescue services after receiving distress calls from migrants at sea. Spanish authorities dismissed the case against her in April 2017 due to lack of incriminating evidence. However the Spanish Police sent the documentation to Morocco, where Helena lives, to enable the Moroccan authorities to open an investigation against her. Although the Tangier Court of Appeals in Morocco dropped the criminal charges in March 2019, this emblematic case contributed to stigmatisation and an atmosphere of intimidation amongst migrant rights defenders in Spain. In addition, WHRD Helena Maleno remains the subject of ongoing intimidation and security incidents in Morocco and Spain, with consequences on her availability to carry out her legitimate human rights activities.

7 http://novact.org/wp-content/uploads/2017/10/Informe-DDHH_1OCT.pdf

8 <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/1-oamnistia-internacional-denuncia-uso-excesivo-de-la-fuerza-por-parte-de-policia-nacional-y-guar/>

9 Some audiovisual evidences can be found here: <http://www.lafede.cat/som-defensores-videos/>

10 https://www.frontlinedefenders.org/sites/default/files/urgent_appeal_spain_human_rights_defender_in_pre-trial_detention_for_over_a_year.pdf

11 https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_6.pdf

12 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22928&LangID=Ehttps://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22928&LangID=E>

13 <https://www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf>

14 <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24112&LangID=E>

15 <https://www.lavanguardia.com/vida/20170809/43449730442/tres-ong-denuncian-las-limitaciones-a-las-visitas-en-el-cie-de-aluche.html>

14. Migrant rights defenders in Spain also faced smear campaigns and defamation from state and non-state actors. In a speech delivered on 31 January 2019, the Spanish Minister of Internal Development, José Luis Ábalos Meco, stated that “70% of case alerts” received by the Spanish maritime authorities come from “an NGO from Morocco” and are “about migrant boats that are about to depart”¹⁶, thus implying that migrant rights organisations were involved in human trafficking and migrant smuggling, rather than humanitarian aid to people in distress at sea. The Minister also claimed that there is a “fraudulent use of humanitarian services” to carry out human trafficking.

15. Migrant rights defenders also reported harassment and threats from law enforcement authorities in reprisal for denouncing violations allegedly committed by the police. In March 2018, the police union in Madrid filed a complaint against **Malick Gueye**, the spokesman of Syndicate of Manteros of Madrid, an organisation working to combat xenophobia and ensure equal access to rights for migrants. The HRD was accused of defamation against the Security Forces in relation to his statement suggesting that police was responsible for the death of a Senegalese migrant, who suffered a cardiorespiratory arrest in the course of the police crackdown on street vendors. Furthermore, the police spokesperson publicly threatened to “go after” Malick Gueye, a strong message intended to provoke a chilling effect against other defenders of the rights of migrants. The trial is pending and Malick Gueye currently faces a fine of up to 5.760 EUR¹⁷.

c) Women Human Rights Defenders

16. While the women’s rights movement made unprecedented gains in recent times, WHRDs reported an increase of gender-based harassment, threats and online violence. This increase was noted by the UNSR on the Situation of Human Rights Defenders, who expressed his concerns regarding threats and defamation of Helena Maleno “relating to her status as a woman”¹⁸. According to the testimonies of WHRDs published in a joint project of Pikara Magazine, Calala Fondo de Mujeres and Front Line Defenders on gender-based online violence¹⁹, women human rights defenders, including activists, writers, journalists and campaigners such as Cristina Fallarás, Miriam Hatibi, Alicia Murillo, Silvia Agüero Fernández, Irantzu Varela, Iman El Azrak, Brigitte Vasallo and Desirée Bela-Lobedde, have been experiencing death threats, threats of sexual assault, personal data disclosure, hate speech and other forms of cyber-bullying on a regular basis as a way to curtail and censor their voices.

16 <http://www.congreso.es/wc/wc/audiovisualdetalledisponible?codSesion=41&codOrgano=327&fechaSesion=31/01/2019&mp4=mp4&idLegislaturaElegida=12>

17 https://elpais.com/ccaa/2019/06/05/madrid/1559721324_932360.html

18 <https://www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf>

19 <http://lab.pikaramagazine.com/violenciasdegeneroenlinea/> . See the report in English at: http://lab.pikaramagazine.com/wp-content/uploads/2019/06/VIOLENCIAS_EN.pdf

Recommendations to the Government of Spain

17. Front Line Defenders calls upon the member states of the UN Human Rights Council to urge the Spanish authorities to prioritise the protection of HRDs, and, in doing so, to:

- a) Repeal or amend the legislation on public protests and take measures to ensure that the existing law on terrorism and human trafficking is not misused to limit the legitimate work of HRDs, with a view to ensure its compliance with international human rights standards;
- b) Take measures to ensure that the judicial system is not used to restrict the legitimate and peaceful work of HRDs, including by refraining from charging defenders with extremism and breaching the law on protests;
- c) Take all the necessary measures to ensure the protection of human rights defenders working on migrant rights from judicial harassment and stigmatisation;
- d) Take all the necessary measures, including legislative, to ensure the protection of WHRDs from violence and stigmatisation, including online hate speech;
- e) Ensure access to justice for those unfairly detained and/or prosecuted in the context of the Catalan independence movement; immediately release Jordi Cuixart and quash his conviction;
- f) Publicly recognize the positive and legitimate role of HRDs in a democratic society and ensure that public officials refrain from engaging in stigmatisation and smear campaigns against HRDs and ensure that they publicly apologize in cases where they do so;
- g) Guarantee in all circumstances that all HRDs in Spain are able to carry out their legitimate human rights activities without fear of reprisals and free of all restrictions including judicial harassment, and ensure full respect for the UN Declaration on Human Rights Defenders.