

Spain: Government should accept UN UPR recommendations on freedom of expression in their entirety

The undersigning organisations call on the Government of Spain to accept the 20 recommendations on freedom of expression made by other member states during the 3rd cycle of the Universal Periodic Review (UPR) of Spain's human rights record, which took place on 22 January 2020 in Geneva. Most of the recommendations call on the Spanish Government to decriminalise defamation, repeal restrictive laws on the grounds of religious insult, and amend unduly limitations on the right to peaceful assembly.¹

UN States' recommendations focus on the need to ensure that the protection of the right to freedom of expression and freedom of assembly is compliant with international and European human rights standards. In particular, the recommendations highlight the need to reform the Spanish Penal Code, the Law on Citizens' Security (the so-called *gag law*) and the Internet-shutdown Royal Decree Law 14/2019 which currently do not meet international standards.

We urge the Spanish Government to accept all recommendations related to freedom of expression which were made in our own UPR shadow reports on these issues submitted ahead of the review.² These recommendations represent critical commitments to uphold Spain's international human rights obligations.

In our reports, we also called for the following specific revisions of the Criminal Code:

- to limit criminal prosecution to cases of direct and verifiable incitement to the realisation of terrorist acts and eliminate indirect and broad abstract forms of glorification or justification of terrorism;
- to reform the Penal Code to ensure that provisions on incitement comply with international human rights law on freedom of expression, in particular by ensuring a specific intent requirement in Article 510(1)(a), and limiting the criminal offence to incitement to violence or discrimination, and by repealing Article 510(b) and (c);
- to repeal provisions on the crime of humiliation, contempt and disregard for victims of terrorism, to ensure full compliance with international human rights law.

We also underline the need to reform the *gag law* (Law on Citizens' Security) in a manner that prioritises the respect and protection of human rights and fundamental freedoms; and the Transparency Act to recognise the right of access to information as a fundamental right. In this regard, we reiterate the General Comment no. 34 that recalls that the principle of national security cannot be used to "suppress information of legitimate public interest that does not harm national security, to prevent the public from accessing this information or to prosecute

¹ Australia, Belgium, Canada, Colombia, Costa Rica, Cyprus, Czech Republic, Egypt, Germany, Ghana, Iceland, Italy, Iran, Luxembourg, Maldives, Mexico, Russia, Switzerland, United States.

² <https://www.article19.org/resources/spain-upr-submission-on-threats-to-freedom-of-expression/>; <http://libertadinformacion.cc/la-la-pdli-traslada-a-naciones-unidas-la-precaria-situacion-de-la-libertad-de-expresion-en-espana/>; https://freemuse.org/def_art_freedom/artists-in-spain-increasingly-subject-to-various-limitations-on-their-expressions-upr-report-freemuse/freemuse_upr_spain/

journalists (...); and it states that “Article 19, paragraph 2 embraces a right of access to information held by public bodies”.³

We welcome that the reform of these laws has been announced by the newly formed Government in Spain in its political manifesto and we will follow-up with Spanish authorities to ensure that concerns related to freedom of expression are included as part of its revision.

We remain concerned over the restrictive environment for freedom of expression in Spain and the misuse and restrictive interpretation of laws in cases concerning protected expression under international human rights law:

- We draw particular attention to a recent case against the Spanish illustrator, Toni Galmés, accused of insult and calumny (*injuria y calumnia*) by the trade union of the National Police, JUPOL Baleares, for drawing a comic representing protests of the Catalan independence referendum of 2017, also known as 1-O. We remain concerned that this case is yet another example of a restrictive interpretation of freedom of expression standards in Spain, contributing to the creation of a chilling effect against free expression in the country.

The adoption of the UPR report is scheduled in June 2020, and we will continue to monitor the process and expect Spain to show its commitment to freedom of expression by accepting all related recommendations. We stand ready to assist with the timely implementation of these recommendations.

ARTICLE 19

European Centre for Press and Media Freedom (ECPMF)

Freemuse

International Press Institute (IPI)

PDLI

Access Info Europe

Federation of Journalists Trade Unions (FeSP)

“Legal regulation and digital citizen participation” Research Group from the Complutense

University of Madrid

³ HRC, General comment No. 34 Article 19: Freedoms of opinion and expression, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>