

UN report recognizes Catalans as national minority and criticizes Spain for mistreating them

On March 9th 2020, Fernand de Varennes, the Special Rapporteur on minority issues for the United Nations, made his report public after visiting Spain on 14 and 15 January last year. The report aims to 'promote the full and effective realization of the human rights of minorities', and refers to the Catalan people as such. **The UN defines a minority as any 'ethnic, religious or linguistic group, representing less than half of the rest of the population'** and where members share cultural, religious or linguistic traits. For the first time then, the United Nations has officially recognized that, in spite of the fact that they constitute a majority in their respective parts of Spain, Basques and Catalans, among others, are a national minority which ought to be treated as such. In this sense, in his report **the Special Rapporteur expressed his concern on the deterioration of the situation regarding hate speech, linguistic rights and civil and political rights of the Catalan minority.**

Hate speech against the Catalan and other minorities

The report notes with concern the increase in hate speech and discrimination against groups such as immigrants and national minorities. In particular, and connected to events that took place in Catalonia in 2017, the Special Rapporteur stated that he received reports of an **apparent increase in hate speech, vilification, vandalism, physical threats and even assaults against members of the Catalan minority** and, to a lesser degree, other national minorities. In the same vein, Varennes mentioned reports suggesting that the **authorities are not sufficiently responding to or prosecuting these allegations**, thus indirectly contributing to an atmosphere of increasing intolerance against minorities and of nationalistic vitriol.

Regarding the Internet and social media networks, he noted that particular attention should also be paid to growing **signs of intolerance and hate speech targeting other minorities in light of the events of 2017**, and that politicians and others outside the region had begun to paint Catalans as a threat and traitors who had to be dealt with severely, at times using violent language. In this sense, **the Special Rapporteur urges Spanish authorities to address the rise in xenophobic nationalism targeting minorities**, including historical communities such as the Catalans.

Minority language rights

In his report **the Special Rapporteur also raises some concern on the situation of linguistic rights of the Catalan minority.** From a Constitutional perspective, Varennes notes some omissions in the Spanish human rights architecture that may have a negative impact on minorities in particular, such as Article 14 of the Constitution and Article 23 of Organic Act No. 4/2000, both dealing with equality and non-discrimination, and which **contain a limited number of grounds for prohibited distinctions that do not include language – an omission that is potentially inconsistent with a number of international treaty obligations for which this characteristic is fundamental.** This could be of concern in relation to possible discriminatory practices against linguistic minorities.

In the areas inhabited mainly by linguistic minorities such as Catalonia **judicial interpretation and other developments have generally led to increasing obstacles to the use of minority languages in a range of public services.** Article 231 of the organic law on the judiciary has been identified as one of the obstacles to the full implementation by Spain of its human rights obligations in relation to the use of co-official minority languages, since it stipulates that in judicial

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proceedings judges, magistrates, prosecutors, clerks and other officers are to use Castilian, and that co-official minority languages will be allowed only if no party objects. In most cases, this has led to criminal, civil and administrative judicial authorities proceeding officially in Castilian. **This could lead to a significant number of grievances and to frustration in some of those communities**, and to unfortunate misunderstandings and even denial of or discrimination in access to public services.

In the view of the Special Rapporteur, **this blanket obstacle to the use of a minority co-official language gives rise to concerns regarding compliance by Spain with its human rights obligations, particularly the prohibition of discrimination**, as outlined in the handbook on language rights of linguistic minorities and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The issue of the **language of education**, and striking the appropriate balance, is particularly sensitive and challenging in Spain. This is partly due to **recent judicial pronouncements – that have emphasized the prominent constitutional position of the sole national official language**, which, in accordance with article 3 of the Constitution, all Spaniards have the duty to know and the right to use – and what they may imply in relation to the right to be taught in Castilian as opposed to in co-official languages.

In this regard, the Special Rapporteur stated that he has received numerous reports from minority groups asserting areas of concern in education. **The autonomous communities of Catalonia and of the Balearic Islands are concerned that there has been a gradual erosion of existing educational approaches that had**, until now, it is claimed, offered non-segregated immersion models that were largely successful in achieving effective bilingualism among most children.

The Special Rapporteur reiterates, however, that regardless of the model or approach in place, **members of linguistic minorities have the right to the use of their language in education to the extent that such use is reasonable and proportional**, so that children may, wherever practical, effectively acquire fluency in their own language as well as in a State's national language.

Another point of concern for the Special Rapporteur was the absence of current empirical data on the impact of different educational models using immersion, bilingual or multilingual teaching methods. Such data had been collected throughout Spain before 2010. This lack of data collection may be feeding feelings that **State authorities may not be fully meeting their obligations regarding the rights of minorities in the area of the use of language in education**.

Violations of civil and political rights

The report addresses the **threats and possible violations of civil and political rights of the Catalan minority since 2017**. Varennes joins other Special Rapporteurs who have already expressed grave concerns about restrictions placed on, criminal charges against, and the subsequent trials and sentences of political figures and protesters belonging to the Catalan minority, like the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, who in April 2018 **urged Spanish authorities to refrain from pursuing the criminal charge of rebellion against those political figures and protesters**, indicating that such charges for acts that did not involve violence or incitement to violence could interfere with the freedom of expression, including peaceful public protest and dissent. The Special Rapporteur on minority issues also shared his concerns in terms of the signal this gives to minorities more generally.

On the Catalan minority civil and political leaders imprisoned in connection with the October 2017 referendum, Varennes states that **non-violent political dissent by minorities should not give rise, as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression** also points out, to criminal charges, since such restrictions should only be imposed where they are strictly necessary and proportionate. In this regard, the Special Rapporteur on minority issues agrees with the recent conclusions drawn by the Working Group on Arbitrary Detention in its opinion No. 6/2019, concerning the extended detention of two members of civil society organizations (former president of the Catalan National Assembly, Jordi Sánchez, and president of Òmnium Cultural, Jordi Cuixart), and the former vice-president of Catalonia, Oriol Junqueras, charged with sedition for a failed bid to obtain Catalanian independence from Spain in 2017. He notes the Working Group's conviction that **the purpose of the criminal charges brought against those individuals was to intimidate them because of their political views**. He also notes the similar conclusions of numerous international organizations, such as Amnesty International, Human Rights Watch and the International Commission of Jurists, in relation to the 2017 events, the subsequent prosecution of members of the government of Catalonia and members of civil society, and the use of excessive force by the police to break up peaceful activities. The Special Rapporteur observes that **these matters arose from the expression of the views of the Catalan minority – and others – in relation to their continued participation and status in the polity of Spain**.

In the view of the Special Rapporteur, alongside the previously stated observations of his colleagues and other organizations, **Spain has legal obligations to protect the human rights of minorities, including the Catalan minority**, especially in relation to: freedom of expression, including political expression, in accordance with article 19 of the International Covenant on Civil and Political Rights; freedom of peaceful assembly and of association, in accordance with article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and articles 21 and 22 of the Covenant; and participation in public life, in accordance with article 25 of the Covenant.

In the report, Varennes also emphasises the fact that minorities have the right to freely and peacefully express their views on their position within the polity of Spain, **and calls the authorities to review the legal definition of the crime of sedition to guarantee that it does not unduly criminalize acts of peaceful civil disobedience**, or impose disproportionate punishments for other actions related to the exercise by minorities of the rights to freedom of expression and freedom of peaceful assembly. In ongoing matters involving individuals who exercised their democratic rights to participation in public and political life, the **Special Rapporteur urges the Government to comply with the principle of legality and certainty with regard to offences whose definition and interpretation may contravene international human rights standards accepted by Spain**.

Likewise, the Special Rapporteur expressed his concerns in the sense that legislative initiatives affecting the rights of minorities have often been **developed without direct input or representation from the minorities affected, or do not yet necessarily result in concrete implementation**.

Link to the full report:

https://int.assemblea.cat/wp-content/uploads/2020/03/HRC_47_Rapporteur_Minority_110320.pdf