
Optional Protocol to the International Covenant on Civil and Political Rights
Application against Spain by Carles Puigdemont, President-Elect of Catalonia
Lodged 1 March 2018

PUIGDEMONT

-v-

SPAIN

SUMMARY: In this application Mr. Carles PUIGDEMONT alleges that Spain is guilty of violating its international treaty obligations through the cumulative imposition of disproportionate and unjustified restrictions with the exercise of his political rights under the Universal Declaration of Human Rights (“UDHR”), and the International Covenant on Civil and Political Rights (“ICCPR”). Spain is a State Party to both treaties. It is also a signatory, without relevant reservations, to the Optional Protocol to the ICCPR, which provides for the right of individual petition. Spain has not notified any relevant derogation to the provisions of the ICCPR which thus remain fully in force. It is legally bound by treaty obligation to secure the rights and freedoms guaranteed by the ICCPR, throughout the territory of Spain, and to all those who fall within its jurisdiction.

Mr. PUIGDEMONT brings this individual petition to the United Nations Human Rights Committee in order to vindicate his right to stand for elections (article 25, ICCPR); his right to freedom of association with other secessionist politicians and political parties in pursuit of a common goal of securing independence from Spain for Catalonia (article 22, ICCPR); and his right to freedom of peaceful political expression in support of the cause of independence for Catalonia (article 19, ICCPR). He invites the Committee to hold that these rights have been violated by cumulative and continuing conduct of the Kingdom of Spain.

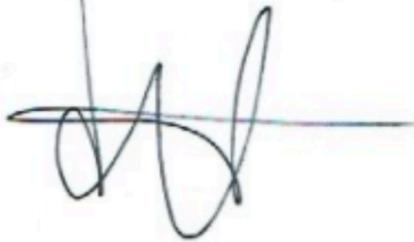
Mr. PUIGDEMONT was effectively deposed as regional President of Catalonia by the Spanish Government, for his leading role in the Catalan independence movement. However he went on to win new elections in December 2017. He was elected by the Catalan Parliament for a further term as President. However, through the combination of measures described in detail in the present application, the Spanish authorities have frustrated his re-election as President, and thereby over-ridden the democratically expressed will of the Catalan people, as freely expressed through the results of the most recent elections.

In consequence of the steps taken by Kingdom of Spain, Mr. PUIGDEMONT has been forced to choose between (a) returning to Spain where he will inevitably be subject to arbitrary detention and prevented from further political participation; (b) remaining as President in exile, thereby obstructing the ability of the Catalan Parliament to function, and permitting the continuation of direct rule from Madrid; or (c) standing aside, to allow an alternative candidate to be nominated and invested as President.

Even though he has never been convicted of a crime or stripped of his political rights in a court of law, Mr. PUIGDEMONT's rights to political participation, political expression and political association have thus been ruptured and ultimately snuffed out, at least for an indeterminate period, in pursuit of Spain's broad political objection to independence from Catalonia, and in order to stifle political opposition and the expression of dissent.

Mr Carles PUIGDEMONT I CASAMAJÓ

Author's signature:

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Brussels, 1 March 2018

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Complaint Form

For communications under:

- Optional Protocol to the International Covenant on Civil and Political Rights
- Convention against Torture, or
- International Convention on the Elimination of Racial Discrimination

- Please indicate which of the above procedures you are invoking:

Optional Protocol to the International Covenant on Civil and Political Rights

Date: 1 March 2018

I. Information on the complainant:

Name: PUIGDEMONT I CASAMAJÓ **First name(s):** CARLES

Nationality: SPANISH (CATALAN) **Date and place of birth:** AMER, CATALONIA

Address for correspondence on this complaint:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Submitting the communication:

on his/her own behalf: X

on behalf of another person: n/a

If the complaint is being submitted on behalf of another person: n/a

Please provide the following personal details of that other person

Name: n/a **First name(s):** n/a

Nationality: n/a **Date and place of birth:** n/a

Address or current whereabouts of the Applicant: Brussels, Belgium

If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint: n/a

Or

If you are not so authorized, please explain the nature of your relationship with that person: n/a

and detail why you consider it appropriate to bring this complaint on his or her behalf:
n/a

II. State concerned/Articles violated

Name of the State against which the complaint is directed:

Spain

Articles of the Covenant or Convention alleged to have been violated:

1. The applicant, Mr Carles PUIGDEMONT, contends that the following rights protected by the Universal Declaration of Human Rights ('UDHR') and International Covenant on Civil and Political Rights ('ICCPR') have been violated:

The right to participate in political life

- 1.1 The right to participate in political life is guaranteed d by Article 21 of the UDHR, which states that:

(21)1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

and by article 25 of the ICCPR:

(25) Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

The right to freedom of association and assembly

1.2 The right to freedom of association and assembly is protected by Article 20 of the UDHR, which provides that:

(20) Everyone has the right to freedom of peaceful assembly and association.

and by Article 21 of the ICCPR, which provides that:

(21) The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

and Article 22 of the ICCPR, which provides that:

(22)1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

The right to freedom of opinion and expression

1.3 The right to freedom of opinion and expression is protected by article 19 of the UDHR, which states that:

(19) Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

and by article 19 of the ICCPR:

(19)1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

III. Exhaustion of domestic remedies / application to other international procedures

Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the alleged violation – detail which procedures have been pursued, including recourse to the courts and other public authorities, which claims you have made, at which times, and with which outcomes:

1. The steps taken to exhaust domestic remedies in this case are inextricably bound up with the merits of the application. They are therefore set out in detail in the Part IV of this application. Mr PUIGDEMONT, deposed as regional president of Catalonia by the Spanish government, won new elections with his political alliance in December 2017. The cumulative impact of legislative, judicial and executive measures taken by the Spanish authorities is that Mr. PUIGDEMONT has been forced to choose between (a) returning to Spain where he will inevitably be subject to arbitrary detention and prevented (like his four detained colleagues) from further political participation; (b) remaining as the nominated candidate for President in exile, in which case he would remain precluded from exercising the functions for which he was appointed, whilst at the same time Spain would have succeeded in obstructing the ability of the Catalan Parliament to function, thereby permitting the continuation of direct rule from Madrid; or (c) standing aside, to allow an alternative candidate to be nominated and invested as President. His rights to political participation, political expression and political association have thus been totally ruptured. In deciding to step aside, Mr. PUIGDEMONT has in no sense voluntarily waived these rights. On the contrary he has taken all possible steps, within the Spanish legal system, to seek relief from the straightjacket that has been placed upon him by the Spanish authorities, acting in concert. As matters currently stand, his applications for effective relief have been refused by the Constitutional Court and the Supreme Court, from which there is no further appeal. Moreover, there is incontrovertible evidence of Government interference with the independence of the judiciary in these proceedings (see paragraphs 68-69 below). In these circumstances, Article 5(2)(b) of the Optional Protocol is no obstacle to admissibility.

If you have not exhausted these remedies on the basis that their application would be unduly prolonged, that they would not be effective, that they are not available to you, or for any other reason, please explain your reasons in detail:

2. The exhaustion of further remedies is, under the Optional Protocol, not necessary if a decision on remedies is ‘unreasonably prolonged’ (Article 5(2)) or if the contemplated remedies are not ‘effective and available’. In the present situation, given the urgency of the matter, Mr PUIGDEMONT is not required to wait further for a resolution of the situation by the Constitutional Court, as the decision on the issue is unreasonably prolonged, and the outcome inevitable. The Constitutional Court has also made it clear that it refuses to take into account the impact on the applicant’s substantive rights with respect to its preliminary injunction. Therefore, the current proceedings before the Court also do not provide an effective and available remedy. By the time of a decision on the merits, the parliamentary election cycle will have advanced to such an extent that the results of the democratic elections would have become irrelevant. Without a timely consideration of the application by the Committee, Mr. PUIGDEMONT’s right to stand for election as President, after a successful parliamentary election, will be entirely and irreparably extinguished.

Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples’ Rights)?

No

If so, detail which procedure(s) have been, or are being, pursued, which claims you have made, at which times, and with which outcomes:

N/a

IV. Facts of the complaint

Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters which may be relevant to the assessment and consideration of the particular case. Please explain how you consider that the facts and circumstances described violate your rights.

AS TO THE FACTS:

1. The factual chronology set out below addresses the cumulative steps taken by the Government of Spain, and the Courts of Spain, each of which amounted to an unjustified interference with the rights guaranteed by articles 19, 22 and 25 of the ICCPR. After setting out the background, the factual summary then identifies, in chronological order, each of the component steps in this cumulative series of violations, culminating in the extinction altogether of the applicant's right to political participation, as guaranteed by article 25 of the ICCPR.

Introduction

2. The applicant, Mr Carles PUIGDEMONT I CASAMAJÓ, served as the 130th President of Catalonia from 10th January 2016 to 27th October 2017. At the date and time of lodging of this application on 1 March 2018, he is President-Elect. However, by the time application is considered, he will have been forced to stand aside, so that the Speaker of the Catalan Parliament can appoint an alternative candidate as President. The series of steps taken by the Spanish executive and judicial authorities has rendered it impossible for him to discharge his duties and responsibilities as the democratically elected President of Catalonia; has thereby left the Catalan Parliament frozen, and unable to discharge its responsibility to govern in accordance with the democratically expressed will of the people; and has subjected Catalonia to unconstitutional direct rule from Madrid. For this reason, the applicant's right to participate in the Government of his country through democratic elections has been snuffed out; and the right of the people of Catalonia to elect their chosen representatives to govern them has been frustrated by repressive actions of the central authorities in Madrid. The frustration of these core democratic rights was the expressed intention of the relevant authorities of

the respondent State. As a consequence, the applicant has been forced against his will, and under protest, to step aside to allow the nomination of an alternative candidate. He takes this step in the interests of the Catalan people, to enable the Catalan Parliament to perform its governing function, to re-establish a measure of autonomy for the region, and thereby to advance Catalonia along its journey towards independence. He remains willing to enter into political dialogue with the Government in Madrid, on behalf of the Catalan people, aimed at securing the release of the political prisoners (as described below); the abandonment of all politically-motivated criminal charges against those who support or campaign for independence, including the charges of rebellion and sedition; the full recognition of Catalonia's autonomy; and the establishment of stable relationships between the two constitutional sovereignties.

Background

3. Mr PUIGDEMONT started his career as a journalist, becoming editor-in-chief of *El Punt* and then director of the Catalan News Agency. He gave up journalism to pursue a career in politics in 2006, when he was elected as a member of the Parliament of Catalonia for the Province of Girona. He was subsequently elected to the Municipality Council of Girona in 2007 and in 2011 he became Mayor of Girona. Following the formation of an alliance between his political group *Junts pel Sí* (Together for Yes), and the *Candidatura d'Unitat Popular* (Popular Unity Candidacy), he was elected by the Catalan Parliament as the 130th President of Catalonia.
4. The Parliament of Catalonia is the unicameral legislature of Catalonia. It is formed by 135 members (so called "diputats", in Catalan language).
5. An authoritative report in the United States Library of Congress (LSLOC) country studies series¹ provides relevant background information on Spain's de-centralised political system adopted during the transition from a dictatorial government to a constitutional democracy (page 207):

'One of the most striking features of Spain's new governmental system is the devolution of power and responsibility to the regions. Regional differences had

¹ *Spain: a country study* (Second edition), Solsten, Eric; Sandra W. Meditz (eds.), 406pp, Federal Research Division, Library of Congress, 1990.

been the source of long-standing tensions between the center and the periphery in Spain. The 1978 Constitution addresses these conflicts by providing for an unprecedented degree of regional autonomy, although not all Spaniards have been satisfied with the pace of the devolution process. At the same time, the relationships between the more powerful autonomous regions and the central government remain complicated by the deliberately ambiguous terms of the Constitution.'

6. The USLOC report proceeds to comment on the division of powers between the so-called 'autonomous communities' and the central government (page 224):

'The division of powers between the autonomous regions and the central government is outlined in Article 148 and Article 149 of the Constitution. The language used to differentiate between the authority of the central government and that of the regions is, however, imprecise and ambiguous, resulting in varying, and sometimes contradictory, interpretations. Further confusion arises from the constitutional provision enabling the autonomous communities to extend their powers gradually, although it does not indicate specifically what these new powers are to be. The areas enumerated as belonging under the exclusive jurisdiction of the national government include international affairs; defense; justice; criminal, commercial, and labor legislation; merchant shipping; civil aviation; foreign trade and tariffs; economic planning; finances; and public safety. Whereas the central government clearly is granted exclusive jurisdiction in these and in other matters, the provision that sets forth the rights of the autonomous communities is stated in less precise language. It declares that these communities may assume authority — a more equivocal mandate — over certain areas. These include the organization of their own institutions of self-government, municipal boundaries, town planning, housing, public works, forestry, environmental protection, cultural affairs and organizations, tourism, sports and leisure events, social welfare, health and hygiene, and non-commercial ports and airports. In addition, the state may delegate to the communities part of its authority in areas reserved to its jurisdiction. Therefore, although the regions have very limited primary authority, the Constitution permits the extension of this authority by subsequent delegation. The Constitution recognizes the right of the autonomous communities to have financial autonomy "for the development and enforcement of their authority."

7. The USLOC report also comments on the powers of the Constitutional Court to resolve potential ambiguities (page 221):

“The Constitutional Court is authorized to rule on the constitutionality of laws, acts, or regulations set forth by the national or the regional parliaments. It also may rule on the constitutionality of international treaties before they are ratified, if requested to do so by the government, the Congress of Deputies, or the Senate. The Constitution further declares that individual citizens may appeal to the Constitutional Court for protection against governmental acts that violate their civil rights. Only individuals directly affected can make this appeal, called an amparo, and they can do this only after exhausting other judicial appeals. In addition, this court has the power to preview the constitutionality of texts delineating statutes of autonomy and to settle conflicts of jurisdiction between the central and the autonomous community governments, or between the governments of two or more autonomous communities. Because many of the constitutional provisions pertaining to autonomy questions are ambiguous and sometimes contradictory, this court could play a critical role in Spain's political and social development.”

8. As part of the development of its constitutional self-government attributions, the Catalan Parliament adopted in 2005 a Proposal for a new Statute of Autonomy with the support of a broad majority (120 votes in favour and 15 against out of 135 seats). Despite the fact that the conservative *Partido Popular* (‘PP’), at the time the opposition party, contested the Catalan Statute in the central Spanish Parliament, an amended Proposal was formally approved in Madrid. The Statute was subsequently ratified by Catalan voters in a referendum on 18th June 2006.
9. Immediately afterwards, the *Partido Popular* challenged the Catalan Statute of Autonomy before the Constitutional Court. Four years later, in June 2010, this Court issued a judgement ruling that fourteen articles in the Statute were unconstitutional, and that 27 others were to be interpreted restrictively. The affected articles included those that granted preferential use of Catalan over Spanish in municipal services. The court also ruled that using the word “nation” had no legal value.

10. The judgment weakened the privileged position of the Statute of Autonomy within the Spanish constitutional order, and was received by political parties and citizens in Catalonia as an act of contempt against the will of the Catalan people expressed by its Parliament and through the referendum.

The events which form the subject of the present application

11. The full text of the judgment was released on 9 July 2010. It marked the beginning of the Spanish constitutional and political conflict which forms the background to Mr PUIGDEMONT's present application and to the violation of his political rights. On the following day, a protest demonstration was organised by the cultural organisation Òmnium Cultural ('ÒMNIUM') in Barcelona, which was attended by over a million people that marched peacefully on the streets of Barcelona under the slogan: "We are a nation. We decide." The local press and the organisers described it as the biggest march that had occurred in Catalonia since the transition from dictatorship to democracy in Spain. On 16 July 2010, the Catalan Parliament passed a solemn resolution denouncing the ruling by a majority of 115 out of 135.
12. The *Associació de Municipis per la Independència* (Association of Municipalities for Independence, 'AMI') was also created in the aftermath of the Constitutional Court judgment. It brings together 780 of about 1000 local municipalities to further Catalan autonomy and aims at promoting the right to self-determination. A series of symbolic (non-binding and unofficial) referendums – *consultes populars*, or 'popular votes' - on independence were held in municipalities throughout Catalonia between 2009 and 2011.
13. Growing social discontent in Catalonia led to several large-scale but peaceful public demonstrations in the following years. On 11 September 2012, the National Day of Catalonia, a massive and peaceful pro-independence demonstration explicitly called on the Catalan government to commence a process that could lead to political independence. The demonstration was organised by ÒMNIUM and the *Assamblea Nacional Catalana* (Catalan National Assembly, 'ANC'), both civil society associations, under the motto "Catalonia, A New State in Europe". The purpose was to promote a "bottom-up" process by which Catalan citizens could influence their political parties. Reports of numbers range from 600,000 to two million demonstrators.

Like other demonstrations in Catalonia before and after, it was entirely peaceful. Since then, similarly large and peaceful demonstrations have taken place every year on September 11.

14. As a response to the 2012 demonstration and growing social discontent, Mr. Artur MAS, at the time President of Catalonia, called a snap election for 25 November 2012. The Catalan President had earlier tried to seek support from Mr. Mariano RAJOY for fiscal reform, but the President of the Spanish Government had rejected his initiative. Indeed, the RAJOY Government has consistently declined to engage in meaningful dialogue aimed at resolving the worsening crisis in Catalonia. The election resulted in a clear majority for the pro-independence parties, although *Convergència i Unió* (Mr. MAS's party) lost a number of seats.
15. The newly constituted Parliament of Catalonia resolved that a public consultation on independence would be held during the following legislature. At its first sitting in January 2013, it approved *A Declaration of Sovereignty and of the Right to Decide of the Catalan People*. The declaration stated that "the Catalan people have, for reasons of democratic legitimacy, the nature of a sovereign political and legal subject", and that the people had the right to decide on their own political future. The Declaration was passed in with 85 votes in favour, 41 against and 2 abstentions.
16. Mr. RAJOY's *Partido Popular*, by then the ruling political party in Spain but with a minority representation in the Catalan Parliament, referred the *Declaration of Sovereignty* to the Constitutional Court.
17. In its judgement, delivered in March 2014, the Constitutional Court declared Article 1 of the *Declaration of Sovereignty* unconstitutional. This provision states that 'Catalonia is a nation'. The Constitutional Court did accept, however, that there was a 'right to decide' derived from the principle of democratic pluralism. While this right does not entail a unilateral right to hold a self-determination referendum, it does allow initiatives of constitutional reform. The judgment reflected the Spanish constitution's ambiguous and conflicting aims; on one hand to preserve Spain as the 'indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards'; on the other its intention to 'recognise and guarantee the right to autonomy of the nationalities and regions which make it up and [to enable] solidarity among all of them' (article 2).

- 18.** During the period of the Parliamentary mandate, the Catalan political leadership made various attempts to negotiate with the Spanish Government concerning the possibility of holding a referendum, as requested by a large majority of Parliamentarians. On 8 April 2014 the Spanish Parliament by an overwhelming majority refused to transfer to the Catalan Government the power to call and organise the proposed referendum. This led the Catalan Parliament to abandon their idea to call a binding referendum and instead they proposed a non-binding consultation.
- 19.** On 19 September of 2014, the Catalan Parliament passed a law regulating public consultations by a broad majority (106 votes out of 135). On 27 September, the Catalan President called a public consultation on independence for 9 November 2014. On 29 September 2014, the Spanish Government filed an appeal of unconstitutionality against the 19 September law, and the decree calling the 9 November consultation. The Constitutional Court met in an extraordinary session held on the same day. It admitted the appeal and suspended the provisions of the Catalan legislation that were challenged.
- 20.** Following the Constitutional Court's ruling, and further obstacles to implement the official announcement of a consultation, Mr Artur MAS, President of Catalonia, announced a public "process of citizen participation" through a public consultation, and announced that it would be supervised by volunteers and would have symbolic effects. Mr MAS had previously tried to negotiate an agreed referendum with the Spanish government, but without success.
- 21.** The consultation ('consulta popular') was held on 9 November 2014. The first question was "Do you want Catalonia to become a state?" In the case of an affirmative answer, the second question was: "Do you want this state to be independent?". The second question was intended to propose a federal reform of the Spanish Constitution, which could offer a political resolution of the conflict. Turnout was just 37%, as the consultation was not perceived as binding in any form. Yet more than 80% of those who voted – 1.9 million people – voted in favour of full sovereignty.
- 22.** The Constitutional Court declared the vote unlawful, and Mr MAS and some of his ministers faced criminal charges in relation to the non-binding consultation on the grounds that it defied the ruling by Spain's constitutional court and expressed contempt.

In March 2017, the High Court of Justice of Catalonia convicted Mr MAS and two other members of his Government for criminal contempt. A third former minister, Mr Francesc HOMS, who was then a member of the Spanish parliament, was convicted by the Supreme Court and was removed from his seat in parliament. The Court has imposed severe fines and banned all of them from holding public office for significant periods of time. Although the courts cleared the Catalan officials of the charge of misuse of public funds, the Spanish Court of Auditors later initiated proceedings to reclaim the costs of the consultation — approximately 5 million euros – from the convicted officials.

23. The Spanish Government's attempt to criminalise the independence movement was a turning point. It marked the hardening of its political strategy and the start of a repressive crackdown that was to involve all organs of State power, including the national legislative, executive and judicial authorities and the monarchy itself. In July 2015, a Catalan separatist coalition led by Mr Artur MAS announced that it would seek independence by political means if it won a new snap election scheduled for 27 September 2015. Mr. MAS declared that the election was to be turned into a plebiscite. Pro-independence parties included the goal of full independence in their electoral manifestos.
24. The Spanish Parliament next passed a law that gave unprecedented powers to the Constitutional Court to enforce its rulings. This legal reform was intended to counteract a potential pro-independence victory, and to further politicise the role of the Constitutional Court. It was later criticised by the Venice Commission of the Council of Europe on the grounds that it undermined the Constitutional Court's neutrality.
25. The election of 27 September 2015 again resulted in a majority for the coalition of pro-independence parties. *Junts pel Sí* (Together for Yes) and CUP (Popular Unity Candidacy) won a clear overall majority of seats. Mr RAJOY's Popular Party – majoritarian in Spain – won only 11 of 135 seats.
26. On 9 November 2015, the ensuing Catalan Parliament passed a resolution declaring the beginning of the independence process. In response, the President of the Spanish Government, Mr RAJOY, stated that the Government might "use any available judicial and political mechanism contained in the constitution and in the law to defend the

sovereignty of the Spanish people and of the general interest of Spain". The Constitutional Court then found, on 2 December 2014, that the resolution of 9 November 2015 (although not intended to have any legal effect) was unconstitutional. The Court subsequently warned the Board of the Catalan Parliament and the Catalan Government that any move to pass legislation or resolutions to advance the cause of independence would be found to be a criminal contempt of court. Indeed the majority of the Board of the Catalan Parliament is currently on bail facing criminal investigation for allowing the pro-independence groups to advance their agenda.

- 27.** Following prolonged negotiations to form a government, the former President of Catalonia, Mr. Artur MAS, stepped down as candidate to be replaced as president by Mr Carles PUIGDEMONT. Mr PUIGDEMONT was elected on 10th January 2016.
- 28.** In September 2016, President PUIGDEMONT faced a confidence vote in the Parliament, which he overcame by announcing that a binding referendum on independence would be held in the second half of September 2017. He reasserted his willingness to seek an agreement on the referendum with Mr. RAJOY's Government. At a meeting with the President of the Spanish Government in Madrid on 18th January 2017, Mr PUIGDEMONT again suggested a dialogue with a view to an agreed referendum, which was, however, rejected by Mr RAJOY.
- 29.** In June 2017 President PUIGDEMONT announced that the referendum would take place on 1st October 2017, and that the question would be, "Do you want Catalonia to become an independent state in the form of a republic?" The Spanish government's response was that a referendum would be illegal, and that it must therefore be prevented.
- 30.** The Catalan Parliament passed legislation on 6 and 7 September 2017, authorising the referendum and passing a "transition law", to provide a legal framework pending the adoption of a new constitution in case the majority of citizens voted 'yes'. The referendum law was explicitly based on article 1 of the ICCPR, which has direct effect in the Spanish legal order by virtue of articles 10 and 96 of the Spanish Constitution of 1978.

- 31.** On 7 September 2017, the Spanish Constitutional Court suspended the statute adopted on 6 September 2017 for the period during which it considered an appeal from the Spanish government, alleging that the referendum was unlawful and could not proceed on 1 October 2017. The law was finally declared invalid by the Constitutional Court on 17 October 2017, after the referendum had taken place. The referendum proceeded despite the suspension order of the Constitutional Court.
- 32.** In order to suppress the referendum, the Spanish government put into effect a major police operation (Operation Anubis). Its purpose was to investigate and disrupt the organisation of the referendum, and eventually to arrest and prosecute the responsible Catalan officials, including (in particular) President PUIGDEMONT. It should be noted that this strategy of criminalising the holding of an unauthorised referendum had no legal basis in Spanish law. Until 2005, the holding of an unauthorised referendum was listed as a criminal offence in the Spanish Criminal Code. However, this provision of the Code was repealed in 2005, so that such action was no longer a criminal offence.
- 33.** As part of the Operation Anubis, Mr. RAJOY's Government ordered the police to seize ballot papers and mobile phones; threatened that severe fines (up to €300,000) would be imposed on people who manned polling stations; closed down websites, and demanded that Google remove a voting location finder from the Android app store. Police were sent from other Spanish regions to suppress the vote and close polling stations.
- 34.** On 20 September 2017 Spanish police arrested 14 Catalan government officials suspected of organising the referendum and announced they had seized nearly 10 million ballot papers destined for the vote. The detentions prompted spontaneous peaceful gatherings of people around Catalonia. The largest in Barcelona saw around 40,000 people gather in front of the Ministry of the Economy. The Public Prosecutor decided to take criminal proceedings via the *Audiencia Nacional* (a special Court in Madrid that has jurisdiction over exceptionally serious crimes such as terrorism or genocide) against an indeterminate number of demonstrators and the heads of the private organisations *Òmnium Cultural* and *Assemblea Nacional Catalana*, alleging that they were guilty of the crime of sedition.

35. The Catalan Vice-president, Oriol JUNQUERAS, called on Catalans to behave peacefully and responsibly and to ignore the “provocations of those who want to stop the vote.” Mr PUIGDEMONT added in a statement to Reuters: “I don’t believe there will be anyone who will use violence or who will want to provoke violence that will tarnish the irreproachable image of the Catalan independence movement as pacifist.”
36. The referendum took place on 1 October 2017, despite being suspended by the Constitutional Court, and despite the harsh intervention of Spanish police forces which involved approximately 6,000 officers, including paramilitaries. Private citizens became organised through social networks and, on the weekend of the referendum, they occupied schools in which polling stations were located and made it possible to keep them open for the vote. 92% of voters supported independence, on a turnout of 43%.
37. On the day of the Referendum, Mr PUIGDEMONT argued publicly that the Spanish government’s attempts to disrupt the referendum were disproportionate and unjustified. As a result of the police operation, around 900 people were injured, and election organisers were arrested. Mr PUIGDEMONT called the police raids a “co-ordinated police assault,” and suggested that the response of the Madrid government was akin to the days of General Franco: “We will not accept a return to the darkest times. The Government [of Catalonia] is in favour of liberty and democracy.” The Mayor of Barcelona, Ms Ada COLAU, called the raids a “democratic scandal”. Massive protest and demonstrations took place around Catalonia in response to the decisions of the RAJOY Government, backed by the Constitutional Court. Protest demonstrations in the streets grew larger and strikes were organised.
38. As tension increased over Catalonia, King FELIPE VI, made a televised address to the nation on 3 October 2017, and accused Catalan authorities of disloyalty to the State. He described the push for independence as “unacceptable” since, in his view, it was intended to break up the Constitutional order. The King omitted any reference to the police violence of October 1, and his speech was very badly received by citizens in Catalonia.
39. In light of the referendum result, the Catalan Parliament and Mr. PUIGDEMONT invited the Spanish Government to enter into a dialogue aimed at a peaceful resolution of the constitutional crisis, and to accept international mediation. The Spanish

Government rejected these calls. As a result, the Catalan Parliament declared independence on 27 October 2017, and was immediately dissolved by the Spanish Government, which imposed direct rule under Article 155 of the Constitution after obtaining the assent of the Spanish Senate. The Spanish government also removed the Catalan regional Government, including Mr PUIGDEMONT, from office.

40. The Spanish Government immediately called regional elections for 21 December 2017. It was clearly their political calculation that these elections would result in a defeat for the pro-independence parties. The following day, the Spanish Government's spokesman, Mr. Inigo MENDEZ DE VIGO told Reuters TV in an interview that if Mr PUIGDEMONT wanted to continue in politics, "I think he should prepare for the next elections".
41. On 30 October 2017 the Spanish Attorney General laid charges of rebellion, sedition and misuse of public funds at the Audiencia Nacional against Mr PUIGDEMONT and other secessionist politicians. A previous complaint had been filed with similar charges before the Catalan High Court, the only court with jurisdiction to hear these matters. On the same day, Mr. PUIGDEMONT and five other Catalan ministers² went into exile in Belgium.
42. From the initiation of the proceedings against Mr. PUIGDEMONT, the Public Prosecutor indicated that, following the dissolution of the Catalan Parliament, Mr PUIGDEMONT (along with Mr JUNQUERAS I VIES and others) no longer enjoyed immunity from prosecution as a member of the Government or Parliament of Catalonia.
43. On 31 October 2017, the Audiencia Nacional declared that it was competent to hear the complaint against Mr. PUIGDEMONT, and summoned him to appear two days later.
44. On 2 November 2017 a hearing was held at the Audiencia Nacional. Mr JUNQUERAS I VIES, the Vice-President of the Catalan Parliament, and Minister of Economy and Finance, was detained. The order for his detention found that he had benefited from

² Meritxell Serret, agriculture minister, Antoni Comín, Health Minister, Dolors Bassa, Labour Minister, Meritxell Borrás, Governance Minister and Joaquim Forn, Interior Minister.

the time necessary to prepare his defence, even though his counsel was absent and the charges against him were not specified.

45. The Spanish prosecutor requested prison without bail for the deposed Catalan Vice President and most ministers. Presiding Judge Carmen LAMELA began hearing the case at 10am on 2 November 2017, finishing the nine hearings by noon. The Spanish government requested that the eight dismissed ministers from the Catalan government, including Mr PUIGDEMONT, be ordered to be arrested and held without bail as a precautionary measure. The other accused were Mr Oriol JUNQUERAS, Mr Raül ROMEVA, Ms Dolors BASSA, Mr Carles MUNDÓ, Mr Jordi TURULL, Mr Josep RULL, Ms Meritxell BORRÀS, and Mr Joaquim FORN.
46. The six were accused of rebellion, sedition and misappropriation of public funds. In her ruling, Judge Carmen LAMELA concluded that each defendant must be imprisoned without bail while awaiting their trial. Their appearances before the Supreme Court were adjourned because they had had less than 24 hours to instruct lawyers. There had been no such adjournment before the Audiencia Nacional.
47. On 3 November 2017 the Court issued European Arrest Warrants against Mr PUIGDEMONT and the other members of his Government present in Brussels, following their failure to attend the hearing in Madrid the previous day. On 5 November 2017 all five, accompanied by their lawyers, presented themselves to Belgian police. After a ten-hour hearing a Belgian judge released them on bail. They were ordered not to leave Belgium without permission and to provide details of their accommodation. Meanwhile, Belgium's Minister for Asylum, Migration and Administrative Simplification stated that the prospect of Mr PUIGDEMONT being granted asylum was 'not unrealistic'.
48. On 10 November 2017 a letter signed by over one hundred law professors from across Spain appeared in a well-established online newspaper EIDiario.es. The letter criticised Judge Carmen LAMELA for "lack of restraint". The authors also accused her of "manipulation rarely seen in forensics". The letter contained the following key passage:

In this regard it should be noted that in our opinion it is seriously mistaken to consider the facts as constituting a crime of rebellion under article 474 of the Criminal Code, for the very powerful reason that a structural element of that crime,

which is violence, is absent; a requirement which after a lively discussion in the Senate was decided to incorporate in the classification precisely to constrain its application, exclusively, to cases of the highest seriousness, which do not occur in this case. Only by violating the principle of criminal legality very seriously could it be affirmed that the accused, in view of the facts attributed to them, could have carried out this crime, or that of conspiracy for rebellion that requires a joint agreement to carry it out with the same violence.

Nor do we believe that in this case the crime of sedition set out in article 544 of the Criminal Code can have been committed, because at no time has there been any indication that the accused have induced, provoked or staged any tumultuous uprising as required by law, nor can it be attributed to those events that occurred previously or the actions of other people, since Criminal Law is governed by the principle of personal responsibility and it is only possible to judge someone by their own acts.

In the same way, it must be emphasised that the Audiencia Nacional is not competent to hear of the crimes of rebellion or sedition, and that such an understanding corresponds to the Audiencia Provincial of Barcelona. In effect, the Organic Law of the Judiciary in its article 65.1 refers to the repealed "crimes against the form of Government" as object of the competence of the Audiencia Nacional, and at no time refers to the crimes of rebellion or sedition.

In this sense, the argument put forward by the head of the Central Court of Investigation to claim their competence constitutes a manipulation seldom seen in the judicial field. Even more so if we take into account that in the Order of 2nd December 2008 of the Plenary Session of the Criminal Division of the Audiencia Nacional, that court clearly stated that the Audiencia Nacional has never been competent to hear the crime of rebellion ; and the same can be said, we add, in relation to the crime of sedition. Abundant in this idea it must be remembered that the Prosecutor General's Office, in the same procedure to which we have just referred, affirmed that the crime of rebellion "has never been part of the crimes against the form of Government ... so it is totally unjustified to conclude ... that the Audiencia Nacional has competence for its investigation and prosecution ".

It is necessary, on the other hand, to denounce the lack of restraint of the head of the Central Court of Instruction no. 3 both in the setting of dates to give a statement (especially if we take into account the decision taken in this regard by the Instructor of the Supreme Court), and in the issuance of preventive detention that, without a doubt, has been seriously disproportionate and lacking in enough justification, beyond abstract manifestations.

In conclusion: from a strictly legal perspective, we demand that the tax and judicial authorities comply with the Law, and that they investigate and, where appropriate, punish all that the Rule of Law authorizes and obliges, but exclusively that, because only within those margins can there be opportunity, proportion and Justice.

49. On 22 November 2017, the Investigating Magistrate of the Audiencia Nacional forwarded the case to the Supreme Court. The facts alleged in the file went back as far as 2015. No specific acts were attributed to any particular individual, and none of the conduct identified in the file was *per se* unlawful.
50. On 24 November 2017, the Supreme Court, which had conducted the investigation against Mr PUIGDEMONT and other members of the Catalan Parliament, ordered a joinder of that investigation and the investigations initiated in the Audiencia Nacional and the High Court of Catalonia.
51. On 1 December 2017 the eight jailed ministers and two jailed independence activists - Jordi CUIXART and Jordi SÀNCHEZ I PICANYOL - appeared before Supreme Court Judge Pablo LLARENA to request bail pending trial. On 4 December 2017 Judge LLARENA released six of the ministers on bail of €100,000 but ordered that their passports be confiscated³. However, Oriol JUNQUERAS and Joaquim FORN, together with Jordi CUIXART and Jordi SÀNCHEZ I PICANYOL, were refused bail.
52. On 5 December 2017, the Supreme Court of Spain withdrew the European Arrest Warrant against Mr. PUIGDEMONT and four others, on the basis that it was not valid for alleged crimes committed by a wider group of people, i.e. the Catalan Government.

³ The six accused that were released on bail were: Raül ROMEVA, Dolors BASSA, Carles MUNDÓ, Jordi TURULL, Josep RULL, Meritxell BORRÀS. They had already spent 32 days in custody.

However, Judge Pablo LLARENA warned that the national arrest warrants remained valid, meaning that the group faced arrest if they returned to Spain.

- 53.** On 16 December 2017, the Vice-President of the Spanish Government, Soraya SÁENZ DE SANTAMARIA, at a rally in the Catalan city of Girona, boasted of Mr RAJOY and the ruling Partido Popular's achievement of "decapitating" the pro-independence parties. This gave rise to suggestions that the separation of powers in the Spanish state had been undermined. A formal complaint was lodged with Spain's Public Prosecutor's Office on 18 December 2017 by lawyer Mr Francesc HOMS MOLIST.
- 54.** New elections in Catalonia, called by the Spanish government, were held on 21 December 2017. Mr. PUIGDEMONT contested these elections from Belgium, as a candidate in the Province of Barcelona, and was re-elected to Parliament. The party of national government, the Partido Popular ('PP'), suffered a 50% reduction in their vote to 4.2%. The pro-independence parties retained their combined Parliamentary majority. Mr. PUIGDEMONT was proposed as the future President by a Parliamentary majority, but the Spanish government refused to countenance his return to office, suggesting instead that the Catalan Parliament put forward a 'clean candidate'.
- 55.** After the December 2017 elections, Mr PUIGDEMONT called for unconditional talks with the Spanish Government. Mariano RAJOY, the President of the Spanish Government, refused, stating that he would only have talks with Inés ARRIMADAS, leader of the unionist Ciutadans group in the Catalan Parliament. The Spanish Government thus again ruled out the possibility of a negotiated settlement to the Catalonia question.
- 56.** Proceedings continued in the Spanish courts, aimed at securing the release of the political prisoners, and seeking orders that they should be able to participate in Parliamentary proceedings in accordance with the results of the election. Oriol JUNQUERAS was denied bail on 5 January 2018 by Supreme Court judges. On 12 January 2018 Supreme Court Judge Pablo LLARENA denied permission for Mr. JUNQUERAS to attend the opening session of the Catalan Parliament, or for him to be transferred to a Catalan prison so that he could be closer to his relatives, but opened the way for him to vote by proxy. When the Catalan Parliament met on 17 January 2018, it

allowed the three imprisoned MPs, Oriol JUNQUERAS and Joaquim FORN and Jordi SÀNCHEZ I PICANYOL to vote by proxy.

57. On 5 January 2018, the Appeal Chamber refused to order the release from detention of Messrs JUNQUERAS, FORN, SÀNCHEZ and CUIXART.
58. On 9 January 2018, Mr JUNQUERAS requested his urgent transfer to a closer place of detention and an order for his exceptional temporary release, in order to be able to participate in the inaugural session of the Catalan Parliament on 17 January 2018. On 12 January 2018, the Supreme Court refused his application, citing the risk of citizen confrontation that would arise upon the transfer of a prisoner who attracts widespread loyalty.
59. On or around 10 January 2018, Juan Ignacio ZOIDO, the Spanish Government Minister of the Interior, stated that legal consequences could not be ruled out for Mrs. ARTADI and Mrs ROVIRA, ERC General Secretary and Campaign Director of Junts per Catalunya respectively, for preparing separatist lists for the elections of 21 December 2017 (even though such arrangements are entirely legal).
60. On 17 January 2018, the Catalan Parliament convened for the first time since the imposition of direct rule, immediately electing a pro-independence speaker of the house, Roger TORRENT, of Esquerra Republicana (Republican Left). In his first public comments, the new Speaker called for an “immediate end” to Spanish direct rule over Catalonia. He also criticised the Spanish courts’ decisions to keep the pro-independence political prisoners in detention pending trial as “absolutely unjustifiable”. Pro-independence parties had agreed to back Mr PUIGDEMONT as candidate for President ahead of the first official vote on the election, which was set to take place before 31 January 2018.
61. On 19 January 2018, the three political parties that together command the majority of seats in the Parliament, expressed their support to Mr. PUIGDEMONT as the only possible legitimate President of Catalonia. The Speaker officially nominated Mr. PUIGDEMONT as President on 23 January, and called a Parliamentary session for the debate and election for 30 January 2018.

- 62.** The Spanish government announced that they would refer the matter to the Constitutional Court on 25 January 2018, and seek an automatic suspension pursuant to article 161 of the Constitution. This article reads: “The government can appeal to the Constitutional Court within two months following its publication date or, in the absence thereof, from the moment when it may come to its knowledge, the nonbinding regulatory provisions and resolutions issued by any organ of the Autonomous Communities”. This effectively froze the ability of the Catalan Parliament to function autonomously.
- 63.** Already, a day earlier, Mr. RAJOY’s Government had asked the Council of State, the supreme consultative council of the central Government in Madrid, for advice on whether to challenge the envisaged election of Mr PUIGDEMONT in the Constitutional Court. On 25 January, the Council advised against such a step at the present time, as such a challenge to the electoral results of a democratic election was unprecedented and the challenge was deemed premature.
- 64.** On 26 January 2018, disregarding the advice of the Council of State, the Spanish Government referred the matter to the Constitutional Court. Ms SÁENZ DE SANTAMARIA, Vice-President of the Spanish government, declared that current circumstances did not permit Parliament to elect Mr. PUIGDEMONT as he did not enjoy his full rights and “has no right to freedom of movement”.
- 65.** Mr. PUIGDEMONT and members of his parliamentary group filed two applications to challenge the Spanish government’s attempt to prevent him from being appointed as President of Catalonia. In the first, before the Supreme Court, he claimed that the decision of the Spanish Government to block his candidacy violated his fundamental rights to political participation. Mr PUIGDEMONT also contested as illegitimate and abusive the use of a mechanism that allows for the automatic suspension of decisions referred to the Constitutional Court.
- 66.** In a parallel appeal to the Constitutional Court, Mr. PUIGDEMONT requested that the challenge to his appointment be dismissed since it was inconsistent with the advice provided by the Council of State to the Spanish Government. The petition explicitly invoked the political rights (including the right to vote) of all members of the Parliament.

67. The President of the Constitutional Court called an urgent meeting the following day, 27 January 2018. This was a Saturday. According to press reports and informed sources, the reporting judge and his clerks suggested dismissing the Spanish Government's appeal in line with the advice of the Council of State. The Court was reported as divided on the matter during the meeting.
68. In a controversial move, acknowledged by the Spanish Government, some of their members reached out to Constitutional Court judges on that day to discuss the disputed appointment of Mr. PUIGDEMONT. A government source declared that "There was no pressure because no member of the Constitutional Court would allow it, but they [the Spanish government] did tell them of the dramatic situation in which democratic institutions would find themselves if Puigdemont was sworn-in and they were forced to act afterwards".
69. At 21:00h on 27 January 2018, the Court reached a unanimous decision to postpone the hearing of the case by ten days to allow both sides to submit their arguments. In the interim, the Court issued an injunction that suspended any session of the Catalan parliament in which Mr PUIGDEMONT did not appear personally with a prior judicial authorization. It also declared that the personal appearance could not be substituted by a delegation to another Member of Parliament or by means of telecommunication. It declared null and void any resolution the Catalan parliament may adopt in violation of its preliminary injunction and threatened the members of the board of the Parliament with criminal charges if they did not enforce the Court decision. This injunction effectively froze the Catalan Parliament, paving the way for the continuation of direct rule from Madrid.
70. The unprecedented injunction lacks legal reasoning to justify the restrictions imposed on Mr. PUIGDEMONT's right to be elected as President. The Catalan Parliament's legal advisors assumed that the injunction made it impossible to hold the electoral debate scheduled for 30 January 2018. Consequently, the Speaker postponed the planned session to formally elect Mr. PUIGDEMONT, saying that he did not have the necessary legal guarantees to proceed. The Speaker continued to insist that Mr. PUIGDEMONT remained the only candidate to form a new Catalan government.

71. Mr. PUIGDEMONT consequently filed an application for authorization to attend the parliamentary session. The application was addressed to the competent judge at the Spanish Supreme Court. The judge, however, was not prepared to consider the application without the physical presence of Mr. PUIGDEMONT in the courtroom. His physical presence would, of course, inevitably have led to his immediate arrest and arbitrary detention, since he is subject to a domestic arrest warrant for rebellion and sedition. His fate would inevitably have been the same as that of the other leading members of his Government, in particular the Vice-President, Mr JUNQUERAS, who has been held in pre-trial detention since November 2017.
72. On 29 January 2018, Mr PUIGDEMONT and the members of his Parliamentary group challenged the Constitutional Court injunction, claiming that it severely restricted the rights of the President-Elect without a legal basis, and undermined the normal functioning of the democratically elected Catalan Parliament. This challenge was dismissed by the Constitutional Court on 30 January 2018, and the injunction was confirmed. The Court held that it is the prerogative of the Spanish government to seek the suspension of any decision referred to the Court. It explicitly refused to consider the adequacy and proportionality of the restriction of Mr. PUIGDEMONT's political rights. This decision is definitive and cannot be appealed.
73. As of 23 February 2018, Mr. PUIGDEMONT and the members of his Parliamentary group reminded the Constitutional Court of the pending decision on the preliminary admission of the case, and reported that there was an unreasonable delay given the urgency of appointing a President of the Parliament and forming a Government in Catalonia. As of the date of the application, no decision has been made.
74. The delay in this resolution has caused irreparable damage, as it has severely curtailed Mr. PUIGDEMONT's right to stand for election. He has been forced to stand aside, in order to make way for the Speaker to appoint another candidate as President of the Generalitat. This was the only step left open to him, in order to avoid the permanent blockage of the Parliament, and the extension of direct rule by the Spanish Government over Catalonia.

75. As regards the continued arbitrary detention of the political prisoners, the following key developments have occurred during February 2018:

- a. Three of the four men still in pre-trial detention have lodged an application with the UN Working Group on Arbitrary Detention. The decisions of the WGAD establish clearly that imprisonment for the peaceful exercise of political rights, including the right to political participation, political expression and political association and assembly, is *ipso facto* an arbitrary detention.
- b. The former Chief Prosecutor of Catalonia, José Maria MENA, stated that the imprisoned Catalan leaders are “political prisoners.” In an interview with the Catalan TV station TV3, Mr. MENA gave his opinion on the situation of the deposed vice-president Oriol JUNQUERAS, Joaquim FORN, and the grassroots activists Jordi CUIXART and Jordi SÀNCHEZ. He concluded that “[t]hey are political prisoners because their behaviour has been purely political”. Given his authority as the former Chief Prosecutor, it is particularly significant that he stressed that the pro-independence movement is “perfectly legal” and should not be persecuted. Regarding the accusations of the jailed leaders inciting violence, he said that he was “puzzled.” “To accuse someone of violence”, he said, “one must prove they have organized violence”. As he pointed out:

“Pacifism is in the DNA of the organizers. Nobody wanted violence, even if there were particular incidents.”
- c. The Secretary-General of Amnesty International has called for the immediate release of all four political prisoners and the withdrawal of all charges of rebellion and sedition against those political leaders involved in organising the referendum and independence declaration.
- d. The Economist Intelligence Unit warned that Spain is in danger of being downgraded to the status of a “flawed democracy” due to the attempt to stop the referendum “by force” and “its repressive treatment of pro-independence politicians”.

- e. The Court has indicated that the trial of all those charged with rebellion and sedition will not conclude before December 2018, by which time the four men being arbitrarily deprived of their liberty for the exercise of their political rights will have been in prison without trial for over a year.

AS TO THE LAW:

76. This application concerns the right to political participation reflected in the cluster of constituent rights set out in articles 19, 22 and 25 of the ICCPR. Although article 1 guarantees the right to self-determination, this application does not invoke article 1 directly. Mr. PUIGDEMONT is not asking the UNHRC to declare its support for the cause of self-determination for the Catalan people. That is not the function of an individual petition under the Optional Protocol. However, the ICCPR *does* expressly guarantee the right of individuals to *argue and advocate* in favour of self-determination and constitutional reform, and to stand for election on a pro-independence manifesto. This is guaranteed through the collection of political rights that lie at the heart of this application. These rights are the foundation stones of any democracy and they guarantee plurality of opinion and debate. The ICCPR and the Optional Protocol may not in themselves guarantee independence for Catalonia, but they do guarantee the right to peacefully mobilise public opinion in support of independence, and to stand for election on a pro-independence manifesto. They also guarantee the right to stand for election in a democratic process that respects and gives effect to the freely expressed will of the people. These are not political arguments. They are specific, legally enforceable, rights.

77. Taking the constituent rights individually:

- a. Mr. PUIGDEMONT is guaranteed, by article 25, the right – and the effective opportunity - to take part in the conduct of public affairs directly, including the right to stand for election, and the right to be elected at genuine periodic elections. Under article 25, Spain must ensure that such elections are held by universal suffrage and that they guarantee “the free expression of the will of the electors”. Spain is also under an express treaty obligation not to impose unreasonable restrictions on the exercise of this right. Spain has egregiously violated its binding treaty obligations in this regard and is continuing to do so.
- b. Mr. PUIGDEMONT is guaranteed, by article 21, the right to freedom of political association, and the right to peaceful assembly and protest. Spain is obliged to respect and protect his right to join a coalition of political parties arguing for reform of the Spanish Constitution to allow for the secession and

independence of Free Catalonia. Spain is also legally obliged not to use force to suppress peaceful protests in support of this independence cause. The steps taken by the Spanish legislative, executive and judicial authorities amount to a cumulative and systematic violation of this right which is ongoing. Mr. PUIGDEMONT is plainly a victim of this violation – indeed he is the primary target of the Spanish Government’s oppressive strategy.

- c. Mr. PUIGDEMONT is guaranteed, by article 19, the right to freedom of political expression. This includes the right to express and impart ideas and information that are unpopular with the Government, or with the overall majority opinion in the State concerned. Providing the expression does not constitute an incitement to violence, it can never be a crime to argue for change to the constitutional order or to advocate for secession. Locking up political opponents and dissenters for the peaceful expression of political opinion, is the hallmark of an undemocratic state. Mr. PUIGDEMONT has argued forcefully for an independent Catalonia and is, in this regard, a servant of the Catalan people. However, he has always and consistently stressed the need for protest to be non-violent and called upon supporters of independence to express themselves peacefully. The violence in Catalonia has not been inflicted by Mr. PUIGDEMONT or his supporters. On the contrary, as the world has seen in the vivid and alarming footage broadcast last October, the violence in Catalonia was inflicted by the police, acting as the agents of the RAJOY Government. Again, this is the hallmark not of a mature democracy, but of a regime sliding into authoritarianism. The treatment of Mr. PUIGDEMONT, designed to suppress the exercise of his right to political expression, puts Spain in clear violation of its legally binding obligations under article 19.

78. From the facts set out above, it is self-evident that all organs of the Spanish State (legislative and judicial as well as executive) have been mobilised in a concerted and cumulative attempt to squeeze the life out of the Catalan Independence Movement. The use of excessive and unjustified force against citizens in their own cities who were merely trying to vote in a democratic referendum was designed to have a chilling effect on the exercise of the political rights guaranteed by the ICCPR. The imprisonment of Catalonia’s elected political leaders, and the most respected civil society spokesmen –

merely for expressing the deeply-held convictions shared by a majority of the Catalan population – was designed to, and did, intimidate others. Spain is holding a Sword of Damocles over the head of the Catalan people, implementing a strategy that is designed to cower them into submission. By bringing to bear the full coercive machinery of state; by sending riot police into Catalonia to disrupt a democratic referendum; by pressurising the judges and forcing them to bend to its will; by imprisoning those who speak out in favour of change, even those who were democratically elected on a manifesto promise to fight for independence; through all these steps, the RAJOY administration has stepped well beyond the limits of responsible governance in a pluralistic democracy. They have declared war on the democratic political rights of the Catalan people in general, of the detained political prisoners and – as far as the present application is concerned – of Mr. PUIGDEMONT himself.

79. Whenever any State so much as interferes with the exercise of one of the political rights guaranteed by the ICCPR, that State comes under an obligation to prove that its action is legally justified under the terms of the treaty. In the present case, this would require Spain to prove three things:

First, that the interference was prescribed by domestic law – administered by a genuinely independent and impartial judiciary. It is clear that a number of the measures taken in the present case were inconsistent with domestic law, or (at the very least) unprecedented. Mr PUIGDEMONT has never been convicted of a crime, nor has he been stripped of his political rights in a court of law. The present restrictions seek to achieve the same effect without respecting basic procedural guarantees. Moreover, it is regrettably clear that Government Ministers telephoned the judges of the Constitutional Court in an effort to influence their decision to grant an injunction against Mr PUIGDEMONT's election (see paragraph 68 above). Astonishingly the Government even admits this. This deplorable conduct is unheard-of in a democracy. It is reminiscent of the manipulation of the judiciary in the Franco era and is entirely inconsistent with the separation of powers on which a democracy depends.

Secondly, the interference must be proportionate to a legitimate aim. Here, no doubt, Spain will argue that its actions can be justified on grounds of national security. But that is the last refuge of a desperate Government. The whole point of

the ICCPR is to put limits on what a Government can do to suppress political representation of minorities. Within Spain, the pro-independence lobby is a minority, but within Catalonia it holds sway as the majoritarian position. It will be for the UNHRC to determine whether Spain's actions are proportionate or not. But the voices of the international community on this issue are getting louder and louder. Earlier this week even the Times of London, a notoriously conservative newspaper, carried an Editorial which reached this conclusion:

“Spain should allow Mr. Puigdemont and other leaders to return and enter a dialogue with the Madrid government and the other autonomous regions of Spain...Madrid should take the risk and learn to talk more about pluralism than sedition.”

Thirdly, even if the Government could overcome the hurdle of showing that its actions were not disproportionate they have to go further and prove that they were truly necessary in a democratic society. No one, even the Government in Madrid, seriously believes that they can establish this.

- 80.** The acid test for any State interference with political rights is to ask whether it impairs the “very essence” of the rights guaranteed. Some degree of regulation or interference is permissible, so long as it can be justified in the national interest. But what is never permissible is a cumulative course of conduct that extinguishes altogether the exercise of the right concerned. Yet that is precisely what has happened to Mr. PUIGDEMONT, who has been forced by repressive State action to relinquish his position as the democratically elected and legitimate President of the Catalan people.
- 81.** All human rights instruments make provision for genuine situations of emergency, providing the State concerned has lodged a notice of derogation with the relevant UN authorities. In times of war or a threat to the life of the nation, political rights may be temporarily suspended for a strictly limited time, providing the measures can be proved to be truly necessary. But derogation is a grave step with international consequences. This, no doubt, is why the Spanish Government has not lodged a notice of derogation. They know that they cannot expect to be taken seriously if they argue that the peaceful democratic movement in favour of independence for Catalonia is analogous to a war; or that it poses a threat to the life of the Spanish nation. Surely the Spanish people and

their democracy are more robust than that. The Spanish nation can surely tolerate, and make space for, discussion and dissent, even where this may involve a challenge to the more inchoate provisions of its Constitution.

In view of all the above, the United Nations Human Rights Committee is requested, in the case Mr PUIGDEMONT, to make a declaration that Spain has violated, and is in continuing violation of:

- The right to participate in political life (Article 21 UDHR and Article 25 ICCPR);
- The right to freedom of association and assembly (Articles 21 and 22 ICCPR); and
- The right to freedom of opinion and expression (Article 19 UDHR and Article 19 ICCPR).

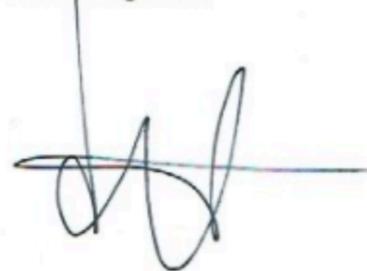
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Mr PUIGDEMONT's treatment by the Spanish State constitutes a violation of international law for reasons of discrimination based on political opinion.

In consequence, by way of remedy, the Committee is requested to call upon Spain to take all necessary measures to put an end to the violations found by the Committee.

Mr Carles PUIGDEMONT I CASAMAJÓ

Author's signature:

A handwritten signature in blue ink, consisting of a vertical line on the left, a horizontal line crossing it, and several loops and flourishes to the right.

Brussels, 1 March 2018

V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

- Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization):
- Decisions of domestic courts and authorities on your claim (a copy of the relevant national legislation is also helpful):
- Complaints to and decisions by any other procedure of international investigation or settlement:
- Any documentation or other corroborating evidence you possess that substantiates your description in Part IV of the facts of your claim and/or your argument that the facts described amount to a violation of your rights:

Please include, if necessary, an indication in a UN language (Arabic, Chinese, English, Spanish, French and Russian) of the contents of the accompanying documentation.

Your communication should not exceed 50 pages (excluding annexes). In case your application exceeds twenty pages, you must also file a short summary.

Response

Please note that in view of the urgency of the present situation, this application is being filed by email. The volume of exhibits to be filed in support, including the decisions of the domestic courts, is substantial. The exhibits will therefore be submitted separately in hard copy and conveyed to the Committee by courier.