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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Tamil Uzhagam, a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2019]

* Issued as received, in the language(s) of submission only.

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Spain _ Catalonia: a political issue brought to court: right to a fair and equitable trial, right to effective judicial protection, right to freedom and prohibition of detention and/or arbitrary detention, right to presumption of innocence, right of defence and right to effective remedy; the breach of the principle of legality and legal certainty

Last 12th of February 2019, the oral hearings of one of the biggest expected trials in Spain started. 9 former Consellers (Ministers), including its Vice-President, the former President of the Parliament of Catalonia as well as 2 social Catalan leaders (President and former President of the organisations Assemblea Nacional Catalana -National Catalan Assembly- and Òmnium Cultural, respectively) are being judged at the Supreme Spanish Court for organizing and implementing a self-determination Referendum in Catalonia on the 1st October 2017, are now accused of rebellion, sedition and embezzlement.

They are indicted for having -allegedly- caused violence and using this -inexistent- violence to produce a rebellion against the State of Spain, whereas all pro-independence assemblies by Catalan people have always been peaceful. The only violence came from the part of Spanish security forces which caused some 1.000 injured people on the 1st October. We can recall here the Statement of the United Nations High Commissioner for Human Rights on March 7th 2018¹.

The trial represents the tip of the iceberg of a huge block of political and legal actions that have taken place in Spain and Catalonia in the last years. Historically, relationship between Catalonia and Spain has been troublesome for centuries and once again the Spanish response to a political situation is far from being through political dialogue, as the High Commissioner encouraged to do.

Spain is bound by international human rights treaties and has obligations deriving from the International Covenant on Civil and Political Rights as well as the European Convention on Human Rights to respect freedom of peaceful assembly and association, to freedom of opinion and expression, not to talk about the right to freedom and, of course, the right to a fair trial and to effective judicial protection, with all due guaranties.

By taking all these authorities and citizens to court, by having holding most of them for more than one year under pre-trial detention regardless of any other less severe measure regarded under Spanish law, Spanish Judiciary has been breaching international human rights law. Judgements and measures issued during the investigation phase, refusal to appeals for freedom, hindering their political rights (even against the Human Rights Committee criteria, when asking Spain for precautionary measure for one of them in order for him to attend the Catalan Parliament as candidate to Presidency of the Government of Catalonia, out of the result of legal democratic Election), many doubts about a neutral non-political, fair and independent trial arise.

Spain has repeatedly ignored recommendations and calls from international organisations, UN bodies (the High Commissioner on Human Rights, the Human Rights Committee, several Special rapporteurs), the Commissioner for Human Rights of the Council of Europe, the European Court of Human Rights, numerous international and national human rights organisations, international authorities, foreign tribunals, expert jurists, etc. asking for a political solution to a political situation and offering international mediation. On the contrary,

¹ See, 37th session of the Human Rights Council. Item 2: Annual Report and Oral Update by the High Commissioner for Human Rights on the activities of his Office and recent human rights developments. High Commissioner's global update of human rights concern, <https://www.ohchr.org/EN/HRBodies/HRC/-Pages/NewsDetail.aspx?NewsID=22772&LangID=E>, "... In Spain, I was dismayed by the violence which broke out during October's referendum on independence in Catalonia. Given what appeared to be excessive use of force by police, the Government's characterization of police action on 1 October as "legal, legitimate and necessary" is questionable. I remind the authorities that pre-trial detention should be considered a measure of last resort. I encourage resolution of this situation through political dialogue..."

the last refusal has come from the High Court not allowing international observers to be in the room.

According to national and international experts this has led to a de facto situation of generalized repression, in which methods characteristics of the “Lawfare” and of the “Criminal Law of the Enemy” have been used. Such methodologies break the “ultima ratio” principle of criminal law, which implies the de facto limitation of rights against an undetermined number of people considered opponents ideologically. All of this violates the rule of law and the separation of powers inherent in developed democracies.

The scope of the inquiry has caused an extensive, disproportionate and abusive interpretation and application of the law, especially criminal law and criminal procedure, by different Spanish courts. This has affected at least two complementary dimensions: on one hand, the judicial investigation, the criminal investigation, the arrest warrants and the subsequent pre-trial detentions of persons have been carried out by courts lacking jurisdiction and objective procedural powers, since proceedings were initiated in the National Court and the Supreme Court in contradiction to the right to the natural judge predetermined by law, in courts over 600 kilometres from home; on the other hand, there has been an abusive, extensive interpretation of criminal law not in accordance with the principle of legality and human rights, given that the police and judicial investigations and interpretations regarding alleged crimes of sedition and rebellion do not respect the principle of criminal legality and the various interpretation criteria of the norm, in accordance with national and international standards.

The factual and legal interpretation of the offences of rebellion and sedition is neither shared nor assumed by courts in Europe, especially German and Belgian courts (this courts have judicially considered that the European arrest warrants were not correct under international law and the element of violence could not be established to indict and accuse the former President of Catalonia and the former Ministers exiled in these countries). Spain’s Supreme Court has made a strategic, self-interested and distorted use of the instruments of international criminal justice cooperation. On top of all this, there has been a judicial atomization and fragmentation of the investigation and prosecution of the judicial cause against authorities and civil society persons as regards the charges of various crimes, including rebellion, sedition, misuse of public funds, contempt of court and membership of a criminal organization, among others.

The bulk of the criminal investigation has been undertaken in at least four different courts, namely the Supreme Court, the National Court, the High Court of Justice of Catalonia and the Investigating courts of Catalonia (especially the Barcelona Court of Instruction No. 13). In addition, there has been an illegal prospective investigation of political and/or social activities (specifically those of politicians, civil servants and leaders of civil society who are regarded as political enemies and/or adversaries). Likewise, there have been violations related to the right to legal defence with due guarantees (including ultra vires investigative activities of the Prosecutor’s Office, in parallel with, and overlapping, court interventions and without the equitable intervention of the defence counsels of those under investigation being possible), breaches of judicial impartiality and independence, and attacks on the right to the presumption of innocence, by both judicial bodies and by Spain’s high authorities. There has also been a judicial abuse of pre-trial detention by the Supreme Court and the National Court: in spite of appeals by international and national agencies, international and national human rights experts, non-governmental organizations for the defence of human rights, including the various agencies, special rapporteurs and mechanisms of the United Nations Organization and even its UN High Commissioner for Human Rights, for over a year - and to this day -, there has been an abusive and disproportionate use of pre-trial detention, without respecting human rights, as regards the situation of both the above-mentioned parliamentary and governmental officials and the two leaders of the main social organizations. Court decisions as regards personal and precautionary measures are also being applied with a breach of the principle of equality before the law. There are numerous examples of loss of impartiality by the investigative Judge during the judicial procedure, including his own consideration as a victim of the crime of rebellion and sedition he was carrying the investigation. This has caused a civil action in Brussels Courts for lack of independence that is still pending.