

# Universal Periodic Review Spain

Fourth Cycle - Pre-session February 21, 2025



# 1

**Undue restrictions on freedom of expression, peaceful assembly and association (**right to protest**) by the application of the Penal Code and other laws**

**\* No somos Delito y Defender a quien Defiende**

## Background on this topic in the 3rd cycle

At least **15 recommendations** were made to Spain in the following sense: Review the laws pertaining to the criminal offences of insulting the Crown and offending religious feelings, decriminalize defamation and review organic law 9/1983 and the Organic Law on Citizen Security with the objective of **protecting the rights of freedom of expression, association and peaceful assembly** in accordance with international standards.

Review/reform the Criminal Code	Reform the Organic Law of 30 March 2015	Measures to guarantee freedom of assembly, association, expression	
150.84- Belgium	150.93- Switzerland	150.80- Ghana	150.88- Cyprus
150.85- Canada		150.81- Iceland	150.89- Iran
150.97- Luxembourg		150.82- Egypt	150.91- México
150.98- Maldives		150.86- Colombia	150.92- Italy
		150.87- Costa Rica	150.94- Czechia

## Current situation and implementation status of recommendations of the 3rd cycle

Since the adoption of the recommendations of the Human Rights Council, **Spain has not experienced significant legislative changes** in the rights to freedom of expression, association and assembly. In particular, because the most questionable provisions of Organic Law 4/2015 and the Penal Code that affect them have not been reformed to comply with international standards.

Judgments issued between the third cycle and this fourth cycle by the Constitutional Court of Spain and the European Court of Human Rights confirm the need to effectively implement the reforms to the aforementioned laws.

## Proposals for (inclusion in your) recommendations

- A. Take measures to reform or repeal, at least, the content of articles 30.3, 36.1, 36.3, 36.4, 36.6, 36.23, 37.1, 37.4, 37.7 and 36.23 of **Organic Law 4/2015**, of March 30, on the protection of citizen security, in order to protect, respect and guarantee the fundamental rights to freedom of expression and assembly.
- B. Take measures to reform or repeal, at least, the content of articles 205, 206, 208, 209, 490.3, 491.2, 496, 504, 510, 543, 522 to 526 and 578 of the **Penal Code**, in order to eliminate ambiguous terms that generate a lack of legal certainty, violate the principle of criminal taxation and jeopardize the proper exercise of the rights to freedom of expression and assembly, as well as other human rights linked to these.
- C. Take measures to reform the content of articles 570 bis, 571, 572 and 573 of the **Penal Code**, with the aim that the exercise of the right to peaceful assembly, civil disobedience and non-violent struggle cannot be investigated and prosecuted by the Police, the Public Prosecutor's Office and the Judiciary under the circumstantial attribution of crimes of terrorism, organization or criminal group.

# 2

## Elimination of identity checks based on ethnic and racial profiling

## Background on this topic in the 3rd cycle

Among more than **15 recommendations** related to **racial discrimination**, 4 are specific on the need to prohibit the use of **ethnic-racial profiling** for the identification, detention or inspection of people by security forces.



150.41- Ghana
150.49- México
150.50- Slovakia
150.51- Ecuador

## Current situation and implementation status of recommendations of the 3rd cycle

There have been legislative changes, but they do **not include an express prohibition** or clear mandates, since Law 15/2022 establishes that it is desirable to “avoid” the use of discriminatory profiles by the Security Forces, so the discretion or possibility of non-compliance remains the same as before the adoption of said regulation.

The clearest **progress** in this matter is contained in article 21.4 a) of Law 19/2020, on equal treatment and non-discrimination in **Catalonia**, approved in December 2020. **However**, this rule is **not applied adequately** as there is no protocol that specifically develops its content.



## Proposals for (inclusion in your) recommendations

- A. Specifically prohibit in the **Equality Law 15/2022** the use of identity checks based on ethnic and racial profiles.
  
- B. Adopt effective measures so that article 21.4 a) of **Law 19/2020, on equal treatment and non-discrimination in Catalonia** is duly applied, preventing regulations or policies without the rank of Law from distorting the object and purpose of that regulation.

# 3

**Incorporating human  
rights standards into  
climate change policies  
and plans**

## Background on this topic in the 3rd cycle

Throughout the history of Spain's UPR, only **2 recommendations** related to **climate change** have been made.

150.54- Morocco

150.55- Fiji

## Current situation and implementation status of recommendations of the 3rd cycle

The **National Adaptation Plan (NAP)** and other policies to address climate change do **not incorporate a human rights perspective** on issues related to the protection of people from the impacts of climate change.

The NAP and other policies to address climate change **lack an intersectional perspective and adequate incorporation of human mobility (migration, displacement, planned transfers)** in their content.

As reported to the Committee on the Rights of the Child, climate change policies and plans have **not guaranteed the participation of children and youth.**

## Proposals for (inclusion in your) recommendations

- A. Ensure that the development and implementation of their policies for adaptation to climate change and mitigation of its effects have an **intersectional perspective**.
- B. Promote and guarantee **the participation of children** in the processes of creating public policies on the environment and climate change.
- C. Adopt effective measures to ensure that the next review of the National Adaptation Plan, or its derivative documents, includes **objectives, actions and indicators related to human mobility (migration, displacement, planned transfers)**.

# 4

## Impacts of artificial intelligence on human rights

## Background on this topic

No recommendations have been made to Spain on this issue in any of the previous cycles.

## Current situation

National regulations that establish something about the regulation of artificial intelligence continue to prioritize ethics as a parameter to prevent misuse. However, reality shows us that it is necessary to **change the “ethical” perspective to a “human rights” one**, since the latter offers clear parameters based on national and international human rights standards.

On July 13, 2022, Law 15/2022, of July 12, comprehensive for equal treatment and non-discrimination, was published. Article 23 of the Law includes aspects related to the use of Artificial Intelligence (AI) in an ethical, reliable and respectful manner with fundamental rights, as well as so that any application of artificial intelligence can include in its design and training data its potential discriminatory impact.



## Proposals for (inclusion in your) recommendations

- A. Incorporate mandatory measures into existing applicable legislation to **avoid discriminatory biases** in the design, development, application and use of artificial intelligence from a human rights perspective.
- B. Develop public policies that **promote diversity** in companies, universities, research centres and, in general, in all areas in which artificial intelligence is studied, designed and developed.
- C. Ensure that the “**seal of quality for algorithms**” **provided for Law 15/2022** is developed and specified, guaranteeing that non-discrimination is one of its key elements, along with transparency and a human rights approach.
- D. Incorporate specific protection measures into existing legislation to avoid a negative impact of artificial intelligence on **children's rights**.



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