

**ASSESSMENT OF
REPORT BY THE SPECIAL RAPPORTEUR OF THE UNITED NATIONS ON MINORITY ISSUES BASED ON
HIS VISIT TO SPAIN**

1. Introduction

Asamblea para una Escuela Bilingüe en Cataluña (Assembly for a Bilingual School in Catalonia, AEB) wishes to express its concern regarding the methodology, content and conclusions of the Report of the United Nations Special Rapporteur on minority issues based on his visit to Spain (Human Rights Council, 43rd period of sessions, February 24 to March 20, 2020)¹.

From our perspective, the Report is grounded on a notion of minority that is questionable and does not reflect the Spanish reality, a notion that potentially favors disintegration and confrontation. If the Rapporteur's conclusions are followed, the individual rights of people not belonging to the groups that the Report identifies as minorities on account of their spoken languages could be adversely affected. In addition, the Rapporteur's Report assumes as certainties statements that are not fully explained or that are patently false.

The development of our view follows.

Before delving further, however, we will point out an element of coincidence with the aforementioned Report: the need for objective tests to verify the level of school achievement of students in the different Spanish Autonomous Communities. The absence of such equivalent data for the entire country prevents an adequate assessment of the education systems of the different Autonomous Communities in Spain. This is a request that has long been made by our association and which is also noted in the Rapporteur's Report (p. 7 of the Report, Nos. 28 to 32).

2. The rapporteurs' concept of minority and its application to Spain

Regarding the concept of minority used in the Report, the Rapporteur remarks that his definition of minority reflects his personal view and that it is not based on international law, on any agreement among the States or on a doctrinal consensus. This definition is as follows:

An ethnic, religious or linguistic minority is any group of people that constitutes less than half of the State's population and whose members share common characteristics such as

¹ <https://undocs.org/en/A/HRC/43/47/Add.1>

culture, religion or language or a combination of any of these. A person may belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence or official recognition or any other status.

Spain's comments to the Rapporteur's Report² indicate that Spain does not agree with the concept of minority used by the Rapporteur because such concept lacks objectivity and only reflects a subjective, unsupported construction. It is therefore doubtful that the Rapporteur's work can be useful given that the core concept on which it is based and that encompasses his entire task is not even accepted by the States to which the report refers.

However, AEB will not delve into the Rapporteurs' **conception of minority** but will focus on showing that such conception **is a Rapporteur's construct and not one derived from international law**. We will also further comment on its repercussions in Spain.

According to the Rapporteur's Report, the following minorities can be identified in Spain: Roma, Asturian, Balearic, Basque, Catalan, Galician, Valencian, Aragonese, Leonese, Aranese, Muslims, Jews, and emigrants of various countries.

The question is how these minorities are arranged in Spain. Aside from Roma, groups of individuals identified for religious reasons (Muslims and Jews) and immigrants, one can assume that, given Spain's cultural, historical and even ethnic homogeneity, the element allowing identification for the rest of the minorities in Spain is based on a linguistic component. From the Report's content when dealing more specifically with linguistic issues, one gets the impression that this is the case indeed: that those whose mother tongue is different from Spanish or Castilian, the language common to all Spaniards, constitute a minority. Nevertheless, this approach has several problems.

First, these minorities cannot be identified as long as there is no census determining mother tongue. Furthermore, it is extremely doubtful that some of these minorities could ever be identified, even by unofficial data. Such is the case, for example, with the alleged Asturian minority, for which, to our knowledge, there are no data available reflecting the number of individuals that have Asturian as their mother tongue. Also, the report does not mention, for example, the Aragonese, Leonese or Olivenza (Badajoz) minorities -all of them examples of linguistic groups within Spain in no way different from the Asturian minority. Such blunders illustrate the extreme weakness of the Report that purports to identify minorities with mother tongue.

Additionally, by using the mother tongue spoken as an identifier for a minority in Spain, as it can be assumed from the Report's content, you incur the problem of determining to what extent a linguistic minority group can be considered segregated from the nation as a whole. As the response to the Report from the Kingdom of Spain points out, there are no separate identities in Spain; members of minorities -in the Rapporteur's definition- are also part of the national group

² <https://undocs.org/en/A/HRC/43/47/Add.2>

as a whole, with no clear separation between national and minority group, since each individual is a part of both.

According to the Rapporteur's Report, however, it is possible to differentiate between the minority group and the majority group. Thus, Spain would consist of a "majority" culture identified as national and several minority cultures. Such approach does not reflect the true configuration of Spanish society, in which national identity is precisely the result of all the particularities coexisting within Spain, as the Kingdom of Spain has rightly observed when commenting on the Report.

AEB believes that identifying diverse political minorities within Spain on the basis of their mother tongue is a faulty premise. This is also true of Spain's Autonomous Communities with different official languages. Obviously, the mother tongue should be taken into account for an assortment of purposes. For example, individuals have the right to be served by the administration in the official mother tongue or to request that this be part of the school's curricula. The identification of political communities with the language spoken in these communities is an anomaly in the report. It may serve as an example the fact that Mr. Miquel Ruffian, spokesman in the Spanish Congress for Esquerra Republicana de Catalunya (ERC), a political party that supports the independence of Catalonia, has explicitly acknowledged that he is a member of the Spanish-speaking community, and that Mr. Miquel Iceta, first secretary of the Partit dels Socialistes de Catalunya (PSC), a party adverse to Catalonia's independence, is a native Catalan speaker.

We don't know **the effects of applying the Rapporteur's peculiar concept of "minority"** in other countries **but applying this concept in Spain would jeopardize social cohesion built upon the rights of individuals as such and on common values shared by all Spaniards. Spain is a country with ample decentralization that is territorially structured in Autonomous Communities which, nevertheless, are not grounded on ethnic or linguistic differences.** They are diverse communities aimed to guaranteeing the respect of all its citizens; their different languages are considered the heritage of the entire community and of all citizens, not only of the native speakers of those languages.

Replacing the concept of integrative identity that we have just described for one based on "minorities" and "non-minorities" is not in accordance with the structural principles of Spain or Catalonia as a whole, and therefore we believe the Rapporteur's approach is wrong. **We would request that until an agreement on the definition of a minority is reached, Spain be excluded from the Reports issued by the Special Rapporteur.**

The Rapporteur's approach can jeopardize individual rights, as we shall further explain.

3. Minorities and individual rights

The most troubling aspect of the Report is that its adopted perspective of minorities may jeopardize the individual rights of people who share institutions and territory with a minority but who are not part of this minority. The negative consequences of this perspective in Catalonia are



clear, as we shall explain, but the same may be true for the other parts of Spain and perhaps also for other countries.

We should bear in mind that article 8.2. of the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, approved by the General Assembly in its resolution 47/135 of December 18, 1992, states that:

The exercise of the rights set forth in this Declaration shall be understood without prejudice to the enjoyment by all people of universally recognized human rights and fundamental freedoms.

We know that the General Assembly Resolutions are not binding except in certain exceptional cases where certain requirements concur and when they are declarative or crystallizing customary norms or general principles of law. In this case, **article 8.2 can be considered a clause that declares a general principle of law, also recognized in all international texts, regarding the prohibition of abuse of law: in no case, the protection and respect of the rights of minorities may jeopardize the human rights and freedoms of other people belonging to the same community.** Therefore, Article 8.2 contains a general obligation that must be respected by all States, based on general international law.

The position adopted by the Rapporteur is that the rights accorded to minority groups and, in particular, the linguistic rights of the members of one minority group must be respected, guaranteed, recognized, protected and empowered. Thus, any efforts aimed at increasing the use of minority languages are positively valued goals in the Report, whereas any obstacles to prevent such increase are disapproved. This is clear, for example, in number 54 of the Report, where it is stated that in certain areas of Navarra the use of the Basque language is not sufficiently guaranteed. Thus, the Report criticizes, for example, certain court decisions limiting the obligation for news broadcasting to use Basque in Spanish-speaking areas of Navarra or determining that knowledge of the Basque language could not be a requirement for a candidate to obtain employment if that knowledge was not directly related to the tasks involved. The prevalence of the value accorded to “increasing and promoting minority languages” in the Report is not appropriate unless weighed against other principles, values and interests. For example, if requiring knowledge of a minority language to access certain jobs is not justified for the type of tasks to be carried out, this requirement would constitute an encroachment on the candidate’s right to work or even a case of language discrimination, in this case against those who do not speak the minority language.

The former, however, will be irrelevant to **the Rapporteur** as he **has adopted the perspective of defending minority rights with disregard for other values or principles.** In this way, any promotion of the minority language or culture would never be reconsidered without objections by the Rapporteur. This is absurd; like any other principles or values, the protection of minority rights must be articulated along with other principles or values.



The perspective adopted by the Rapporteur's Report does not take into account other principles or values and is, therefore, **discriminatory for the rights of individuals who are not part of a particular minority**. In other words, safeguarding the rights of a minority group cannot legitimize violating the rights of those who are not part of this minority. The outcome is contrary to the principle of General International Human Rights Law set forth in article 8.2. of the Declaration on the Rights of Minorities, approved by the General Assembly of the United Nations in 1992, *supra* cited.

4. The language question in education. The balance between the linguistic rights of minorities and non-minorities

In his Report, the Rapporteur supports education based on the principles of nondiscrimination on the grounds of language (point 52), reasonableness and proportionality in the right of linguistic minorities to use their language in education (points 62 and 64) and no segregation.

He also emphasizes his support for educating in the mother tongue by making reference to the Report on “Education, language and human rights of minorities” (Human Rights Council, 43rd session, February 24 to March 20, 2020)³ where it is stated verbatim: “As has been shown in numerous studies, when teaching children in a language other than their own, they are not given an education of the same quality as that of children who receive their education in their mother tongue.”

How to combine the right to education in the mother tongue for children of linguistic “minorities” with the same right for children of linguistic “non-minorities”? In application of articles 2 and 28 of the UNICEF Convention on the Rights of the Child of November 20, 1989, it must be carried out without distinction and under equal conditions.

AEB requested an interview with the Special Rapporteur to discuss its belief that the model of education in Catalonia violates the right to education in the mother tongue of Spanish-speakers in Catalonia (“a non-minority” in the Rapporteur’s jargon) as the principles of non-discrimination, reasonableness and proportionality are not respected.

The Spanish Organic Law of Education states the right of students to be schooled in Spanish and also in the language of the Autonomous Communities with linguistic co-officiality, that is, in Catalan and Aranese in the case of Catalonia. The Catalan model of education favors the linguistic conjunction model. This model prevents language segregation by assuring that students in the

³ no. 47 of <https://undocs.org/en/A/HRC/43/47>

same class-group are taught both in Spanish and Catalan in a balanced proportion for voluntary and compulsory education (kindergarten, primary and secondary school and vocational training).

However, the Catalan Government has been applying the so-called compulsory language immersion model as a general rule. Thus, in practically all Catalan schools the use of Catalan as the only language of instruction is pervasive. This means that Spanish “is taught” only as a language course.

In practice, this means:

- For Preschoolers (3-6 years old): 0 hours of Spanish language per week
- For Primary education (6-12 years old): 2 hours of Spanish language generally beginning with 7-year-old children
- For Secondary education: 3 hours of Spanish language per week

This situation has forced many Catalan families to take legal action requesting their rights to the linguistic conjunction model. In application of the principle of co-officiality and reasonable proportion, the Spanish Supreme Court and Catalonia’s Superior Court of Justice have ruled that all Catalans have the right to be schooled in any of the official languages in at least 25% of the total curricula. The Catalan Government does not honor the principle of co-officiality and reasonable proportion. As shown in a report by the AEB on the language projects of the Catalan public education system⁴, practically all educational centers in Catalonia use the Catalan language as the vehicle and content of instruction. This is so despite the fact that, according to the last survey of linguistic uses carried out in 2018, 52.7% of Catalans have Spanish as their mother tongue, 31.5% have Catalan as their mother tongue and a small number (2,400 residents in the Valle de Arán region) have Aranese as their mother tongue.

The Rapporteur was informed of the education model pervasive in Catalonia in a meeting held in Barcelona with AEB. However, the Report’s conclusions regarding this model are bleak and seem to be dictated by the Department of Education of the Catalan Government itself (which does not comply with judicial decisions) and the Catalan separatist associations that have fed the Rapporteur with information and with which he maintains stable ties, as informed by the Spanish press.

What does the Rapporteur say about the Catalan model of education?

- He considers the Catalan model of linguistic immersion a success (point 65).
- He recommends that the Spanish authorities review any measure that may reduce the amount of instruction in the Catalan minority language in public schools (point 65).

⁴ https://www.aebcatalunya.org/images/Informe_ProyectosLinguisticos_1.pdf

- He advises against reducing the use of Catalan language in schools inconsistently with the Spanish Supreme Court ruling in 2015 supporting a family’s claim that at least 25 % of the subjects in Catalan schools be taught in Spanish, including at least one basic subject (point 57).

It must be concluded that for the Special Rapporteur education in the mother tongue should only be granted to “minority schoolchildren”, that is, to those children pertaining to the alleged Catalan-language minority, while the same right is denied to the so called “non-minority schoolchildren”, that is, the rest of the children who are mostly Spanish speakers. (As we have seen, the Rapporteur’s assumption is that Catalan native speakers are a minority). As a result, most of the children that are resident in Catalonia are compelled to be schooled in Catalan, which is not their mother tongue.

This reality does not concern the Rapporteur. From his personal and subjective definition of minority, the violation of rights of those he considers “non-minority” groups is irrelevant. The benefits of education in the mother tongue for a minority (Minority Education, Language and Human Rights Report No. 50) do not therefore reach non-minority students.

One could argue the virtue of an approach to the rights of minorities that overlooks the fact that a large number of people in a territory are deprived of an education in their native language and are instead imposed a language that is not their own. But what it is totally unacceptable is that such deprivation of the right to be educated in own’s mother tongue be encouraged by the Rapporteur’s Report based on the principle that increasing the use of a minority language is a positive goal, even if it involves imposing the use of that language on people who are non-native speakers of this language.

One cannot maintain that the State has the obligation to use the minority language when speakers of that language are numerous and that language has a literary and cultural tradition (see No. 57 of the Report of the Rapporteur on education, language and human rights in minorities) while restraining possible amendments of this obligation when it violates the rights of other population groups. That is the case if the minority language is imposed upon a large number of speakers, sharing territory with the minority but whose mother tongue is another language which also has a literary and cultural tradition. Furthermore, **the Report argues that setting limits to the use of the language of non-minority speakers must be applauded, and any setback in the said limitation must be criticized.** The Special Rapporteur’s complete disregard of Court rulings in favor of the linguistic conjunction model in Catalonia is blatant. Reforms by the autonomous government of the Balearic Islands to balance the use of Catalan, Spanish and English in education have also met with negative criticism by the Rapporteur’s negative assessment. (see numbers 65 and 66 of the Rapporteur's Report in relation to Spain).

The Rapporteur supports the model of Catalan linguistic immersion because he believes that all children in the Catalan education system eventually become fluent in the co-official languages. In his report, he disregards the linguistic rights of “non-minority students” and ignores that the



purpose of the Catalan model of education is linguistic substitution, as demonstrated in the statistical difference among Catalonia's residents between mother tongue and language of habitual use. Data from 2018 by the Statistical Institute of Catalonia shows that a 52.7% of the population in Catalonia has Spanish as a mother tongue against 31.5% that have Catalan as a mother tongue. Those who have Catalan as their usual language amount to 36.1% of the population and those who usually speak Spanish are 48.6% of the population⁵.

From the above information it follows that the majority of Spanish speakers suffers from ostensible discrimination by the authorities of the Autonomous Government of Catalonia. This discrimination not only is unjustified, but it also violates the General International Law set forth in article 8.2 of the Declaration on the Rights of Minorities of the 1992 General Assembly, already cited.

The Special Rapporteur's Report verges on the absurd when the support claimed for minority rights entails the violation of the individual rights of non-minority groups. Therefore, we **request that Spain be excluded from minority-related examinations and that a thorough review of the methodology followed be carried out.** Also, we request the implementation of mechanisms to prevent that protecting minority rights can cause violating the rights of sectors of the population that, while not included in any minority group, they live in and share the same territory.

5. Inaccuracies and errors in the Report

As indicated at the beginning of this document, the Report is replete with inaccuracies and errors. For example, it indicates that UNESCO and other international organizations had praised the system of compulsory immersion in the Catalan language practiced in schools around Catalonia (No. 58) without citing sources. Similarly, the Report ignores the discrepancies between the legal system in Catalonia – a system of linguistic conjunction, not one of linguistic immersion – and the actual practice in schools. He has also chosen to ignore the legal fight of families who are seeking a bilingual education for their children and not exclusively a Catalan one.

Equally disturbing in the Report are the references to the trials and court decisions relative to the politicians and activists indicted for illegally attempting to repeal the Spanish Constitution in Catalonia in 2017. Nos. 67 to 70 of the Report address these issues and link these procedures to the referendum of October 1, 2017. The Report overlooks that this referendum was supported by laws approved by the Catalan Parliament on September 6 and 7 of the same year. These laws pursued to repeal the Constitution in Catalonia and break the Spanish legal order. Participants in the events of September and October 2017 against the Constitutional order in Catalonia were not charged for being peaceful protesters, but rather for their attempts, publicly expressed, to

⁵ <https://www.idescat.cat/indicadors/?id=anuals&n=10364&lang=es>

separate part of Spanish territory from the rest of the country, against the provisions of the Spanish Constitution and international law. It is beyond the scope of a report purporting to deal with minority issues to that such should not be subject to criminal sanction.

The section dealing with the Rapporteur's assessment of court ruling concerning the events of September and October 2017 shows an evident lack of objectivity. Such assessment is unsupported and, therefore, the serious accusations against the State contained in the Report are unjustified, as the comments of the Kingdom of Spain to the Rapporteur's Report attest.

We here refer to the remarks contained in the Comments issued by Spain on the Rapporteur's Report where more errors and inaccuracies are detailed. For example, the Report mistakenly states that the mere taking of images or the processing of the data of police officers constitutes a crime in Spain. Similar inaccurate assertions are found regarding the use of languages other than Spanish by the Central Administration and the Judiciary in Spain.

6. Conclusion

The Rapporteur's Report starting point is based on a subjective concept of what is a minority that lacks general acceptance and whose translation in the case of Spain induces division and contradicts essential elements of our political and legal community.

The Rapporteur's Report encourages discrimination inasmuch as it contributes to legitimize the violation of individual rights in a clamorous display of incoherence. That is particularly pungent when it encourages support for education in the mother tongue for minority groups while depriving non-minority groups living in and sharing the same territory as minority groups of that same right

Finally, the report lacks objectivity, reflects inaccuracies and errors and uncritically adopts the positions of entities associated with Catalan separatist movement⁶.

Barcelona, May 27, 2020

Asamblea por una Escuela Bilingüe

www.aebcatalunya.org

Ana Losada

Presidenta Asamblea por una Escuela Bilingüe en Cataluña

⁶ Juan Pablo Cardenal, *La Telaraña. La trama exterior del procés*, Barcelona, Ariel, 2020, pg. 131-139

