

**Mandates of the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the right to rights to on the rights to freedom of peaceful assembly and of association**

Ref.: AL ESP 8/2022

24<sup>th</sup> October 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and association, pursuant to resolutions 43/8, 43/4 and 50/17 of the Human Rights Council.

In this connection, we would like to draw the urgent attention of Your Excellency's Government to the information we have received regarding **espionage activities with Pegasus and Candiru spyware on a large number of Catalan personalities and activists during the period 2017- 2020. The victims of the complex and sophisticated spy programs included Catalan leaders, members of the European Parliament, legislators, jurists and members of civil society organisations. Pegasus spyware is sold only to governments, according to its producer (Israel-based NSO Group). Most of the spyware attacks reported below occurred in the territory of Spain.**

According to the information received:

During the 2017-2020 period, the electronic devices of several public figures of the Catalan minority were attacked and/or infected with Pegasus and Candiru mercenary spyware. At least 65 persons were affected, of which at least 63 were attacked or infected with Pegasus, another four with Candiru, and at least two of them were attacked or infected with both.

According to the information provided, the victims included members of the European Parliament, Catalan minority leaders, legislators, jurists and members of civil society organisations. In some cases, family members of the former were also infected.

In particular, among the targets of the attack were Catalan MEPs who supported the independence of Catalonia. Several Catalan civil society organizations supporting Catalan independence were also targeted by Pegasus, including the Catalan National Assembly (ANC) and Òmnium Cultural. Members of the Catalan open source and digital voting community, including at least one that promotes the Catalan language and culture, were also targeted by the spyware. Catalan politicians and lawyers representing prominent Catalans were also attacked and infected with Pegasus, some extensively.

Many victims were targeted by SMS-based attacks and more than 200 messages of this type were collected. These attacks involved operators sending phishing text messages. The sophistication and personalization of the messages varied depending on the

attempts, but often reflect a detailed understanding of the target's habits, interests, activities, and concerns. In many cases, the timing or content of the text was highly personalized to the targets and indicated the likely use of other forms of surveillance on them.

A common method employed by the attackers was under the guise of official notifications from Spanish government entities, including tax and social security authorities. In particular, the fake official messages were sometimes highly personalized. For example, a message sent to a victim included a portion of his actual official tax identification number, suggesting that the Pegasus operator had access to this information.

The specific timing of the targeting activities coincided with events of special interest to the Spanish government. The use of bait content in the infected SMS suggested access to the target's personal information, such as Spanish government identification numbers.

According to the information available, Pegasus spyware is sold exclusively to governments and the National Intelligence Centre of Spain would be one of the clients of NSO Group, the developer of Pegasus.

Among the members of the Catalan minority affected by these espionage activities are:

- Professor **Elisenda Paluzie**, president of the Catalan National Assembly 2018-2022 and a prominent Catalan economist, academic and activist. Prior to her role with the ANC, she held the position of dean of the Faculty of Economics and Business at the University of Barcelona. Dates and circumstances of the alleged attacks: Ms. Paluzie first discovered that her phone had been hacked in June 2018 after taking her phone to an IT security expert who discovered spyware on the device. In November 2019, another Pegasus-related compromise was discovered. In August 2020, Ms. Paluzie was informed that two of her incoming SMSes were Pegasus attacks (May and June 2020). In March 2022, her old mobile phone from 2019 was checked with a confirmed infection around October 29, 2019.
- Mr. **Jordi Sánchez was** president of the Catalan National Assembly 2015-2017 and a prominent Catalan political activist. Dates and circumstances of the attacks: Mr. Sánchez was first attacked with a Pegasus SMS infection attempt in 2015, shortly after a large demonstration in Barcelona. The following attacks took place on April 20, 2017 (the day before the Catalan government met with civil society groups to discuss the October referendum), October 1st, 2017, and October 13th, 2017. Between 2017 and 2020, Mr. Sánchez received at least 25 Pegasus-deployed SMS attacks, most of which masqueraded as news updates relating to Catalan and Spanish politics. He also received messages purporting to come from Spain's tax and social security authorities.
- Mr. **Arià Bayé** is a Catalan pro-independence activist who has been a member of the General Board of the Catalan National Assembly since 2018. Date(s) and circumstances of the attack(s): Mr. Bayé was attacked at the beginning of the COVID-19 pandemic. Upon being advised to check his phone for a particular type of SMSes, Mr. Bayé found two or three texts with characteristics similar to Pegasus attacks. An SMS, dated May 14, 2020, has been confirmed to be a Pegasus attack.

- Ms. **Sònia Urpí** has been a member of the General Board of the Catalan National Assembly since June 2020. Ms. Urpí is the partner of Jordi Baylina, a communication expert, who has been the victim of 26 Pegasus-related attacks. In July 2020, Ms. Urpí became the person in charge of mobilization at the Catalan National Assembly and organized the peaceful demonstration in favour of self-determination on September 11th (National Day of Catalonia). Date(s) and circumstances of the attack(s): In July 2020, Ms. Urpí had her phone checked for spyware shortly after her partner's phone was found to be hacked. It was then discovered that Ms. Urpí's phone had been hacked around June 22, 2020, just after the ANC board elections in May of the same year. Two attacks have been confirmed around this period (June 2020).
- Mr. **Jordi Domingo** Ceperuelo is a technical agricultural engineer currently working in education. He is a Catalan pro-independence activist, having been an active member of the Catalan National Assembly since 2015. He has been a member of the local board of the ANC in the city of Reus. He actively participated in the Catalan self-determination referendum in October 2017. He is the president of the Catalanophobia Observatory. Date(s) and circumstances of the attack(s): Following the detection of a vulnerability in the WhatsApp security breach, Mr. Domingo was contacted in October 2019 and informed that he had been identified as affected by a Pegasus spyware attack. The attack is reported to have occurred in May 2019.
- Mr. **Jordi Baylina** is the technology leader at Polygon, a popular decentralized Ethereum scaling platform, and a Catalan pro-independence supporter. He is also a consultant on projects related to digital voting and decentralisation, and has built a widely-used privacy toolkit. Dates and circumstances of the attacks: Mr. Baylina was extensively attacked, including at least 26 attempts at infection and 10 incidents of infection between October 2019 and July 2020, including around June 6th, 2019, July 11th, 2019, October 29th, 2019, November 15th, 2019, November 26th, 2019, December 11th, 2019 and December 23rd, 2019. One of those text messages masqueraded as a boarding pass indicating that the attacker had access to Mr. Baylina's Passenger Name Record (PNR). Another message sent to Jordi Baylina included a portion of his actual official tax identification number, suggesting that the Pegasus operator had access to this information.
- Mr. **Andreu Van den Eynde** is a legal counsel for Mr. Oriol Junqueras i Vies, a former vice president of the Generalitat de Catalunya [Catalan Government] and for Mr. Raul Romeva Rueda, a former Minister of Foreign Action, among other politicians belonging to political party Esquerra Republicana de Catalunya (ERC). Mr. Andreu Van den Eynde was allegedly hacked on May 14, 2020.
- Mr. **Pere Aragonès** has been the President of the Generalitat de Catalunya [Catalan Government] since May 24, 2021, and formerly the Vice President of the Generalitat de Catalunya and Minister of Economy and Finance. From September 30th, 2020 to May 24th, 2021, he held functions at the Office of the Presidency of the Generalitat de Catalunya. He has been a member of the National Executive of Esquerra Republicana since 2015, and the National Coordinator of the party since September 2019. Dates of the alleged infiltration: January 4th, January 5th, January 13th, 2020 (via SMS)
- Mr. **Jordi Solé** was a Member of the European Parliament (MEP) from 2017 to 2019. He is the ERC Secretary for International Affairs, and the Secretary General of the European Free Alliance since July 2020, replacing ERC President Oriol Junqueras Vies as an MEP. Dates of the alleged hack (via SMS): around June 11th, 2020 and June 27th, 2020.

- Ms. **Diana Riba** has been a Member of the European Parliament (MEP) since 2019 and the Spokesperson for Esquerra Republicana at the European Parliament (EP). She is also a member of the Catalan Association for Civil Rights (ACDC). Date of the alleged hack: October 28th, 2019.
- Mr. **Josep Maria Jové** has been a Member of the Parliament of Catalonia since 2018 and is currently the President of the Parliamentary Group. He was the General Secretary of the Office of the Vice-Presidency and of the Ministry for Economy and Finance of the Generalitat of Catalonia from 2016 until his arrest on September 20th, 2017. Dates of the infiltration attempt: presumably around June 1st, 2020 (via SMS).
- Ms. **Meritxell Serret** is a Catalan politician and a former Minister of Agriculture, Livestock, Fisheries and Food of the Generalitat de Catalunya. She spent 3 years in Belgium, with other members of former President Carles Puigdemont's cabinet. Infiltration and Hacking Dates: There are no official confirmed dates.
- Ms. **Marta Rovira** has been the Secretary General of Esquerra Republicana since 2011. Between 2008 and 2012 she was the Secretary General of the European Free Alliance. She was a Member of the Parliament of Catalonia from 2012 to 2018, serving for some time as the president of the Parliamentary Group. On March 22nd, 2018, she resigned as a Member of the Parliament of Catalonia. Infiltration and hack dates: infiltration on June 12th and 25th, 2020 (via SMS) and hack (June 12th and July 13th).
- Mr. **Sergi Sabrià** has been a Member of the Parliament of Catalonia since 2012 and president of the Republican parliamentary group from 2018 to 2021. Member of the Esquerra National Executive since 2015 as Deputy Secretary General for Communication and Strategy. He has been the director of the Office of Strategy and Communication for the President and the Generalitat of Catalonia since June 2021. Infiltration and hack dates: Infiltrations on February 9th, 2018, February 27th, 2018, May 24th, 2018, January 18th, 2019, February 10th, 2020, April 11th, 2020, April 14th, 2020, May 5th, 2020, May 10th, 2020, May 13th, 2020, June 1st, 2020, June 8th, 2020, June 9th, 2020, June 10th, 2020, June 21st, 2020, June 26th, 2020 June 2020, July 3rd, 2020; Hacks on April 11th, 2020, May 5th, 2020, May 10th, 2020, May 13th, 2020, July 13th, 2020.

We express our very serious concern about what is reported to be an extensive and well-coordinated spy program on prominent Catalan minority activists and public figures that appears to be an interference with their right to freely hold and express their views, exchange and disseminate information and ideas, to peacefully assemble and participate in associations, to have a private life and privacy in correspondence, and to be equal before the law and entitled to equal protection of the law without any discrimination. We are also concerned that the widespread use of this type of spyware may lead to an increase in self-censorship, which has a chilling effect on the enjoyment of the right to freedom of opinion and expression in Catalonia in general.

We also express our particular concern about the fact that the aforementioned affected persons are all members of the Catalan minority, and that their attack seems to be related to their peaceful activities in favour of the Catalan people. This specific targeting appears to interfere with the right of minority groups to freely assert and promote their identity, culture and views. Furthermore, this selective targeting appears to be profiling of a minority, a practice prohibited by international and regional human rights law.

We further express our concern that at least one defence lawyer for Catalan minority activists was also affected by the espionage program. If confirmed, such a practice would constitute an attack on the independence of lawyers and human rights defenders.

All of the above gives the impression of a consistent pattern and well-planned program to address activists belonging to the Catalan minority and their supporters regarding their views, opinions and activities. This factor adds to the gravity of the allegations and our concerns.

In relation to the above-mentioned allegations, please find attached the **Annex of References to International Human Rights Law** which summarizes the relevant international instruments and principles.

It is our responsibility, in accordance with the mandates given to us by the Human Rights Council, to seek to clarify the allegations brought to our attention. In this sense, we would be very grateful for your cooperation and comments on the following matters:

1. Please provide any additional information or comments regarding the above allegations.
2. Provide all available information about possible official investigations by the Spanish authorities on the reports of espionage activities on the mentioned victims.
3. Please provide clarification on the relationship or connections between the espionage activities reported and the Spanish authorities.
4. Please provide clarification on how the Pegasus spyware, supposedly sold exclusively to governments, could have been used against Spanish citizens belonging to minorities and others.
5. Please provide clarification on how the alleged activities, if confirmed, are compatible with Your Excellency's Government's obligations under the provisions cited above and how you plan to remedy any inconsistencies with international human rights rules.
6. Please provide information on what Your Excellency's Government is doing or plans to do to guarantee reparation for the victims and the non-repetition of the espionage activities denounced.

In relation to the alleged facts and concerns mentioned above, see **the Annex on references to international human rights law** attached to this letter, which cites the international human rights instruments and standards relevant to these allegations.

We would appreciate receiving a response within 60 days. After this period has elapsed, this communication and any response received from Your Excellency's Government will be made public through the communication reports website. They will also be available later in the regular report to be submitted to the Human Rights Council.

Pending your response, we urge Your Excellency's Government to take all necessary measures to protect the rights and freedoms of the above-mentioned person(s) and to investigate, prosecute and impose appropriate sanctions upon any person responsible for the alleged violations. We also urge you to take effective measures to prevent such events, if they occurred, from happening again.

We may publicly express our concerns in the near future, as we believe that the information received is reliable enough to indicate that there is a matter that demands immediate attention. In addition, we consider that public opinion must be informed about the potential

*Translated by the Catalan National Assembly*

implications related to the aforementioned allegations. The press release will indicate that we have been in contact with Your Excellency's Government to clarify the relevant issues.

Please accept, Excellency, the assurances of our most distinguished consideration.

Fernand de Varennes

Special Rapporteur on minority issues

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

## **Annex**

### **References to international human rights law**

Regarding the facts and concerns raised above, we would like to refer Your Excellency's Government to its legal obligations under international law applicable to the issues raised.

First, we recall that the Universal Declaration of Human Rights, adopted by the General Assembly on December 10th, 1948, is a founding normative document of the United Nations system, and recognizes in its article 1 that "all human beings are born free and equal in dignity and rights".

Understood in the context of minority rights, this means that states must refrain from practices that discriminate against minority groups on their territory<sup>1</sup>.

We also wish to recall the following provisions of the Universal Declaration:

#### *Article 12*

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

#### *Article 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.

#### *Article 20*

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

In addition, we wish to remind Your Excellency's Government of its legal obligations under the International Covenant on Civil and Political Rights of 1966, in particular:

#### *Article 17*

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

#### *Article 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.

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<sup>1</sup> E/CN.4/Sub.2/AC.5/2005/2, para 4

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, or of public health or morals.

*Article 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.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by 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. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

*Article 27*

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

We wish to remind Your Excellency's Government of the international standards derived from the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by consensus by the United Nations General Assembly on December 18 of 1992 (A/RES/ 47/135):

*Article 1*

1. States shall protect the existence and national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage the conditions for the promotion of that identity.

2. States shall adopt appropriate legislative and other measures to achieve those ends.

*Article 3*

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.

2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.



In addition, the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/41/41) expressed serious concerns about the trend of trolling and government-sponsored cyberattacks “to monitor and hamper the work of human rights defenders and civil society actors” (para. 43).

In addition, the Special Rapporteur explicitly refers to the use of the Pegasus spyware that allows “hacking into, and watching in real time their communications, location, and activities” (para. 46), which constitutes “a direct violation of individuals’ right to freedom of peaceful assembly and of association, as they cannot be justified as pursuing a legitimate aim in a democratic society” (para. 44).

We also wish to remind Your Excellency's Government of its legal obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950):

*Article 8 – Right to respect for private and family life*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

*Article 10 – Freedom of expression*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

*Article 11 – Freedom of assembly and association*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Likewise, we refer your Excellency's Government to the Framework Convention for the Protection of National Minorities of the Council of Europe ([Treaty] number 157 of the Council of Europe), applicable to Spain since September 1st, 1995. The Framework Convention for the protection of National Minorities is a legally binding multilateral treaty relating to the protection of national minorities, which specifically seeks to promote the full and effective equality of national minorities by creating appropriate conditions to allow them to preserve and develop their culture and to preserve their identity. Article 3, paragraph 1, of the Convention establishes that any person belonging to a national minority shall have the right to freely choose whether to be treated as such, and that this choice or the exercise of the rights that correspond to him shall not result in any disadvantage. They are connected to that choice. Article 5(1) of the Convention establishes that the Contracting Parties undertake to promote the necessary conditions for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, one of which is their language. Article 7 of the Convention establishes that the Parties to the Convention shall guarantee respect for the right of all persons belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression and freedom of thought, conscience and religion. Article 17(1) of the Convention provides that the Parties to the Convention undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across borders with persons lawfully residing in other States, in particular with those with whom they share a common ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

In addition, we remind Your Excellency's Government of the recommendations and best practices regarding minority rights that have been published by the OSCE High Commissioner on National Minorities (HCNM). In particular, the 2006 OSCE/HCNM Recommendations on Policing in Multi-Ethnic Societies in paragraph 16 clearly state that steps should be taken to ensure that police enforce the law in an impartial and non-discriminatory manner that does not single out any particular group, for example, by participating in 'racial profiling'.