WEA
WORLD EVANGELICAL ALLIANCE

Alianza Evangélica Española

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To the attention of the Human Rights Committee - Country Report Task Force on Spain

Freedom of religion in Spain: challenges faced by the Protestant minority

Joint report submitted by World Evangelical Alliance and the Spanish Evangelical Alliance to the Country Report Task Force on Spain of the Human Rights Committee, ahead of the consideration of the List of Issues for Spain during the Committee's 127th session in October - November 2019.

The World Evangelical Alliance (WEA) was founded in 1846 in London. Today, the WEA is a network of churches in 129 nations that have each formed an evangelical alliance and over 100 international organizations joining together to give a world-wide identity, voice, and platform to more than 600 million evangelical Christians worldwide.

The Spanish Evangelical Alliance (AEE) was founded in 1877 and is a member of the World Evangelical Alliance (WEA) and the European Evangelical Alliance (EEA). Its focus lies in defending freedom of conscience and freedom of religion or belief, promoting Evangelical unity and offering biblical answers to contemporary societal challenges.

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Report Contents

1. This report is submitted by the World Evangelical Alliance and the Spanish Evangelical Alliance in advance of the Committee's review of Spain to highlight some areas of concerns regarding Spain's compliance with the International Covenant on Civil and Political Rights (hereafter "ICCPR"). We call on the Committee to urge the Government of Spain to address the following key issues under ICCPR:

Catalonia: regional and municipal laws on places of worship *(art. 18, art. 2 and 18 ICCPR)*

Imminent closure of churches and mosques based on discriminatory safety legislations

2. The autonomous region of Cataluña has passed a legislation on places of worship, Law 16/2009, revised in 2014, complemented by Decree 94/2010, that includes very strict safety regulations for places of worship. These regulations include detailed provisions about fire safety, maximal capacity of visitors, thermic and water isolation, phonic isolation, ventilation and climatization, minimal number of hygiene rooms, access road, parking etc. A license provided by the municipalities is needed for all new places of worship or for existing buildings undergoing a renovation or existing buildings were a religious community would be meeting for the first time. Local mayors who find that a place of worship is not in conformity with the law, have the capacity to decide its closure.
3. In 2014, the Parliament of Cataluña decided that places of worship established before 2010 have until the end of 2019 to bring their existing buildings in conformity with the law in order to obtain the municipal license necessary to pursue their activities.

4. The law provides for an exception for places of worship benefiting from a cooperation agreement between Spain and the Holy See. Thus, in practice, only religious minorities are concerned by these legislations. Only very few new places of worship were able to open since the new legislation was passed. Very few existing places of worship meet the requirements provided in the law. Hundreds of places of worship are concerned. Mayors will have a discretionary power to decide to close places of worship that have not been able to conform to these regulations. Other autonomies such as the Basque Country are exploring the possibility to follow the same route as Cataluña. Such a legislation restricts the freedom of religion or belief in a disproportionate manner, as the necessity of these burdensome regulation is not proven. The fact that the Catholic church is not submitted to the same safety regulations also questions its necessity. It is also clearly discriminatory, as this law only applies to the religious minorities, while the Catholic church is excluded from its scope.

5. On the basis of the Catalonian legislation, some municipalities have enacted municipal laws going even further. In the city of *l'Hospitalet de Llobregat*, the municipal law provides that places of worship are not authorized in urban residential zone. It also provides, amongst other regulation, that there must be a minimum distance of 250m between two places of worship. In *l'Hospitalet de Llobregat*, only 9 places of worship currently hold the required while the city hosts over 60 places of worship, meaning that over 80% of places of worship face a risk of forced closure. Such municipal regulations serve no legitimate purpose and are arbitrary: they represent a blatant violation of the freedom of religion of belief of these communities.

Recommendation

6. **Immediately suspend the application of the Catalonian law on places of worship and bring the legislation in conformity with the international right to freedom of religion or belief, which includes the right to worship in community with other, in public or in private and refrain from any discriminatory provisions targeting religious minorities.**

The impact of regional pro LGBTI legislation; the case of Valencia *(art 18, art.2 and 18 ICCPR)*

7. Several regional laws have been adopted in Spain to eliminate discriminations against LGBTI persons and establish policies of positive discrimination in favor of LGBTI persons. In this report, we will present sections of the *Valencian law: "LEY 23/2018, de 29 de noviembre, de la Generalitat, de igualdad de las personas LGTBI. [2018/11252]"* as an example of the challenges arising from such legislation in relation to freedom of belief, non-discrimination and freedom.

Criminalization of "conversion therapies"

8. Paragraphs (d) and (e) of Article 60(4) of *LEY 23/2018* state that the following are very serious infringements: *"(d) Refusal to immediately withdraw the implementation or dissemination of aversion, conversion or counter-conditioning methods, programs or therapies designed to change a person's sexual orientation, gender identity or gender expression.*
(e) The performance, dissemination or promotion of aversion, conversion or counter-conditioning methods, programs or therapies designed to modify a person's sexual orientation,

gender identity or gender expression, irrespective of the consent given by the person undergoing such therapy."

9. The purpose of these articles are to combat practices of trying to change an individual's sexual orientation from homosexual or bisexual to heterosexual using psychological or spiritual interventions, sometimes referred as "conversion therapies", in particular in the context of religious currents holding a critical view of homosexuality. However, the vague terminology used in those provisions implies that *voluntary* access to punctual or recurrent consultations with secular or religious counselors or ministers, by an LGBTI person questioning his or her identity, could be considered a therapy of counter-conditioning and thus, a serious offense under the law. LGBTI persons looking for such counseling would be deprived from being allowed to participate in these services in line with their own convictions or faith (art. 18 ICCPR). It also affects the freedom of religion or belief of counselors deprived from their right to provide counseling or to pray with a person asking for their services and support.

10. Paragraphs (d) and (e) of Article 60(4) are in direct contradiction with the notion of "*gender self-determination"* developed in other articles of the law. Article 6(1)(b)(2) of the law recognizes *"the right to one's own personality, which includes the right to construct for oneself a self-definition with respect to one's sexuality, including body, sex, gender, sexual orientation, gender identity and gender expression. These characteristics are essential to each person's personality and constitute one of the fundamental aspects of self-determination, dignity and freedom."* However, art. 60 disregards the will of the person ("*irrespective of the consent given by the person*") and thus violates the freedom of "gender self-determination" that article 6(1)(b)(2) seeks to protect. It is unclear from the law, how the contradiction between art. 60(4)(d) and (e) and art. 6(a)(b)(2) will be resolved objectively. In practice, the law seems to apply the principle of self-determination subjectively only in one direction, thus discriminating between people based on their personal beliefs (art. 18 ICCPR, art. 2 ICCPR).

11. This also leads to concrete discrimination in terms of access to services, as a gender determination one way can give access to "*psychological support therapies, medical and surgical treatments"* (art. 48 and 49), while any services provided to gender determination in another way is criminalized (art. 60(4)(e)).

Education: Disregard for the rights of the parents (art 18§4 ICCPR)

12. The law provides for the development of *"sexual education programs and guides that address sexuality, gender, family and sexual development diversity. These contents will be sequenced by educational levels and elaborated under standardized criteria, in accordance with the recommendations of international organizations, from a scientific, objective and not doctrinal point of view."* (art. 22(2)(e)) Even though the law states that these programs will not be developed from a doctrinal point of view, teachings on gender, family and sexual development diversity tend to be doctrinal by essence. The law does not mention how it will respect different philosophical and religious perspective on these questions nor if those classes will be optional. The right of the parents under Article 18(4) *"to have respect for the liberty of*

parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions" does not appear to be taken into account in the law.

Recommendations

13. **Review regional laws on LGBTI promotion and in particular "anti conversion-therapies" clauses which restrict the right to freedom of belief of LGBTI persons and of councillors, and which discriminate the individual's ability to self-determine one's identity and its access to services.**

14. **While developing and implementing educational material on sexuality, gender and family, guarantee the rights of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.**

The case of retired Protestant pastors *(art. 18, art. 2 and 18, art. 26 ICCPR)*

A persisting discrimination

15. Under Francisco Franco's regime from 1939 to 1975, non-Catholic Christians faced discrimination and non-Catholic ministers were not recognized. This meant that Protestant pastors were excluded from the pension system. The situation persisted until 1999 were the system was corrected, without however retroactively reintegrating all the previously excluded pastors. Consequently, dozens of retired pastors, or their widows are still excluded from the pension system in Spain.

16. In 2004, the Spanish Church of Spain supported the case of a pastor affected by this situation. The case of pastor Martin Manzanas went on to the European Court of Human Rights (ECtHR), were Spain was condemned in 2012, as the Court considered that Spain had violated art. 1 of Protocol n°1 (protection of property), in combination with art. 14 of the Convention (non-discrimination).

17. Even after the ECtHR's decision, the situation of the pastors has not been settled. This led to a Royal Decree adopted in 2015 in attempt to resolve the problem; [1] however, the decree set requirements that not a single pastor was able to fulfill and was annulled in 2017. Spain has yet to change its legislation effectively.[2]

[1] Evangelical Focus, *Pension for Retired Pastors Recognised*, (19 May 2015).

[2] Video Launch: Justice for Spanish Pastors, a short documentary that sheds light on the fate of Protestant pastors seeking justice and equal treatment in Spain https://www.ceceurope.org/video-launch-justice-for-spanish-pastors.

Recommendation

18. **Urgently address the situation of the pastors excluded from the pension system until 1999, making sure that the pastors concerned, their widows or the Churches who had to cover for their pension scheme receive appropriate compensation.**