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Spain: Amnesty International regrets Spain's rejection of recommendations to investigate enforced disappearances and its refusal to review incommunicado detention regime

Human Rights Council adopts Universal Periodic Review outcome on Spain

When Spain reformed its Criminal Code in June 2010,¹ it failed to align the definition of torture in Article 174 with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Recommendations to address this shortcoming were made during the review.² Amnesty International is disappointed that these recommendations were rejected by Spain.³ In November 2009, in its Concluding Observations on Spain, the Committee against Torture had requested that two important elements be added to the definition of torture in Article 174 to align it with the Convention: to specify that torture can also be committed by “a person acting in an official capacity” (in addition to “an authority or public official”) and to add to the purposes of torture in Article 174 “intimidating or coercing the person subjected to torture or a third person”.⁴ Amnesty International urges Spain to act with urgency on the Committee's conclusions.

Amnesty International has consistently called on Spain to investigate crimes committed during the civil war (1936-1939) and the Franco era (1939-1975) and to ensure that no amnesty law is applied to crimes against humanity. The organization also condemns the recent charges made against the investigating judge for having investigated the forced disappearance of more than 114,000 people between 1936 and 1951.⁵

Despite ratification of the International Convention for the Protection of All Persons from Enforced Disappearance in 2009 and reform of the Spanish Criminal Code in 2010, the Criminal Code still fails to define the crime of enforced disappearance in line with international law. The prosecution of enforced disappearances remains subject to the application of amnesties and limitation periods. Amnesty International notes with disappointment that Spain has rejected the recommendation made during the review, to investigate, punish and redress crimes of enforced disappearance in accordance with international law.⁶ It urges Spain to reconsider its position on this important recommendation.

Amnesty International welcomes Spain's support of recommendations to collect and publish statistics on racially motivated crimes, to develop a national plan of action against racism and xenophobia, and to intensify efforts to thoroughly investigate acts of racial violence and punish those responsible.⁷ It is also pleased to note that Spain has indicated its support of additional

1 Organic Law 5/2010 of 22 June 2010

2 A/HRC/15/6, paragraphs 86.19 and 86.20 (Iran and Czech Republic).

3 A/HRC/15/6/Add.1, paragraphs 10 and 11.

4 Concluding observations of the Committee Against Torture, Spain, (CAT/C/ESP/CO/5), 9 December 2009, paragraph 7.

5 Amnesty International, “Charges against Spanish investigative judge must be dropped”, 22 April 2010. Available: <http://www.amnesty.org/en/news-and-updates/charges-against-spanish-investigative-judge-must-be-dropped-2010-04-22>.

6 A/HRC/15/6, paragraph 86.26 (Mexico).

7 Ibid, paragraphs 84.14-84.21.

recommendations to ensure a time frame for concrete action and other comprehensive measures.⁸

Amnesty International is extremely disappointed, however, at Spain's refusal to review its regime of incommunicado detention.⁹ Under this regime, individuals suspected of terror-related offences may be held incommunicado for up to 13 days, and persons suspected of other serious offences for up to five days. Detainees have no right to legal assistance of their choice or to consult in private with their duty lawyer; they have no access to a doctor of their own choice; their family is not informed of their detention or location, and foreign nationals cannot inform their embassy or consulate. The organization regularly receives allegations of torture and other ill-treatment during incommunicado detention, and international human rights bodies have repeatedly called for its abolition.¹⁰ Amnesty International strongly urges Spain to urgently reconsider this recommendation with a view to supporting it.

Background

The UN Human Rights Council adopted the outcome of the Universal Periodic Review of Spain on 21 September 2010 during its 15th session. Prior to the adoption of the report of the review Amnesty International delivered the oral statement above. Amnesty International also contributed to the information basis of the review through its submission on Spain: <http://www.amnesty.org/en/library/info/EUR41/013/2009/en>

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8 Ibid, paragraphs 86.17 and 86.18 (Belgium and Iran).

9 Ibid, paragraph 87.5 (Costa Rica).

10 Concluding observations of the Human Rights Committee, Spain (CCPR/C/ESP/CO/5), 27 October 2008, paragraph 14; and the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/10/3/Add.2), 16 December 2008, paragraph 32.