



AMNESTY INTERNATIONAL ASSESSMENT OF THE IMPLEMENTATION BY STATES OF PREVIOUS UPR RECOMMENDATIONS

**21ST SESSION OF THE UPR WORKING GROUP,
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INTRODUCTION

The key value of the Universal Periodic Review (UPR) lies in its potential to contribute to tangible improvements in the situation of human rights in the countries under review. The focus of all participating states should therefore be on *implementation*. For that reason it is vital that reviewing states monitor the implementation of accepted recommendations and, where necessary, follow up in subsequent reviews to ensure that states under review live up to their commitments.

In this document, Amnesty International provides an overview of the state of implementation of some of the key recommendations made in the previous reviews, in 2010, of the following five states: Grenada, Guyana, Kenya, Turkey, and Spain.¹ The document is divided into two sections: the first section considers cross-cutting issues addressed in more than one country review, while the second section considers some other issues on a country-by-country basis. The specific recommendations assessed are identified in the footnotes by document and paragraph reference, and by the states who made those recommendations. A simple word search across the document will therefore immediately identify the recommendations originally made by, for example, Uruguay or the Czech Republic.

While Amnesty International welcomes efforts by states to give effect to accepted recommendations, a large number of the recommendations assessed in this document remain unimplemented or only partially implemented. In some cases, the respect, protection, or fulfilment of the human rights referred to in recommendations has even deteriorated. Amnesty International takes this opportunity to call on all states – states under review as well as reviewing states – to make every effort to give prompt and full effect to accepted recommendations and voluntary commitments. Reviewed as well as reviewing states should stay in bilateral contact throughout the review period to collaborate, share good practice, and offer assistance as relevant, to foster the full implementation of recommendations made in the UPR.

CROSS-CUTTING ISSUES

Ratification of international human rights instruments

Amnesty International welcomes efforts by states to implement recommendations to sign, ratify, or accede to human rights instruments. **Grenada** received a number of such recommendations during its first review,² and in May 2011 it

¹ These states are chosen on the basis that Amnesty International prepared submissions on each for the OHCHR summary of stakeholders' information as part of the UPR process. The material in this assessment document is based on those submissions, public versions of which are available at www.amnesty.org.

² A/HRC/15/12, recommendations 71.1 – 12 (Algeria, Brazil, Slovakia, Chile, Spain, Argentina, Uruguay, South Africa, France, Netherlands, Mexico, China).

acceded to the Rome Statute of the International Criminal Court and in May 2013 it ratified the International Convention on the Elimination of All Forms of Racial Discrimination. Grenada also ratified the Convention on the Rights of Persons with Disabilities in August 2014.

Guyana also accepted a number of recommendations to sign, ratify or accede to a variety of human rights instruments during its first UPR.³ It has since acceded to the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and Child Pornography, and on the involvement of children in armed conflict, in July and August 2010, respectively. Guyana also ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in July 2010. However, the country has yet to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, despite the commitment it undertook during its first UPR.⁴

In line with its commitment to do so at its review in May 2010, **Spain** ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in September 2010, becoming the first European state party to this Optional Protocol.⁵

Turkey ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in September 2012, as it agreed to during its first UPR.⁶ Turkey's experience since then, however, illustrates clearly that ratification of international human rights instruments is only one step toward greater human rights compliance, with progress contingent on political will at the national level; nearly two years later the Optional Protocol remains unimplemented, with Turkey having failed to establish a national preventive mechanism, a key element of the instrument and one explicitly mentioned by in one of the accepted recommendation.⁷

National framework and legislation to protect human rights

Amnesty International welcomes **Kenya's** adoption of a new Constitution containing a comprehensive bill of rights, an issue which was raised during its first review.⁸ Under the new Constitution, conventions ratified by Kenya are automatically part of the country's laws,⁹ although jurisprudence from the courts on this issue has varied. The interpretation and enforcement of human rights is entrusted to the courts while three constitutional commissions are charged with the promotion and protection of human rights and access to justice by all.¹⁰ While the Constitution has created an appropriate normative and institutional framework, policy and practice are inconsistent. The government continues to disregard court rulings on human rights and its support for the work of national human rights institutions is inadequate.

In January 2014, **Grenada** established a Constitution Reform Advisory Committee "to continue the consultation process on Constitution Reform" and "to advise the government on the way forward" regarding the adoption of a new constitution. Amnesty International has called on the Committee to mainstream human rights throughout its work, in line with recommendations accepted by Grenada during its first UPR.¹¹

In the previous review, **Spain** was commended for the adoption of its Human Rights Plan and accepted a recommendation to ensure the maximum implementation of the Human Rights Plan.¹² In February 2012, however after the finalization of the Human Rights Plan, Congress passed a motion urging the newly elected government to implement

³ A/HRC/15/14, recommendations 68.1 – 9 (Brazil, Spain, Argentina, Slovenia, Slovakia, Chile, Uruguay, Maldives, Mexico).

⁴ A/HRC/15/14, para. 13, recommendations 68.2 (Spain), 68.3 (Argentina), 68.8 (Maldives).

⁵ A/HRC/15/6, para. 7, recommendation 85.1 (Portugal, Azerbaijan).

⁶ A/HRC/15/13, recommendations 100.1 – 100.5 (Brazil, Chile, Uruguay, Belarus, Denmark, Czech Republic).

⁷ Ibid.

⁸ A/HRC/15/8, recommendations 101.7 (Niger), 101.9 (Republic of Korea).

⁹ Constitution of Kenya (2010), Article 2(5) & (6).

¹⁰ The three commissions are: Kenya National Commission on Human Rights; National Gender and Equality Commission; and the Commission on Administrative Justice.

¹¹ A/HRC/15/12, recommendation 71.16 – 17 (Nicaragua, United Kingdom).

¹² A/HRC/15/6, paras 9, 28, 59, 65, 67, 69, recommendations 84.1 (Russian Federation), 86.17 (Belgium).

a new Human Rights Strategy;¹³ at the time of writing this report, Spain still does not have an extant Human Rights Plan. Although the government has started the process of evaluating the previous plan, it has failed to adopt a diagnosis of the human rights situation as the basis for the second Human Rights Plan.

In **Turkey**, the promised overhaul of the Constitution has yet to be completed, leaving the current Constitution out of line with the country's international human rights obligations. Moreover, despite a series of legislative amendments, provisions in the Penal Code remain a barrier to freedom of expression in law and practice. At the policy level, the Ombudsman Institution, with the first Ombudsman appointed in November 2012, is a useful if under-utilised addition to Turkey's human rights framework.¹⁴ However, the National Human Rights Institution, also established in June 2012, continues to lack guarantees of independence and resources and has so far proved to be ineffective and irrelevant, despite Turkey's acceptance of a number of recommendations calling for the establishment of a national human rights institution in conformity with the Paris Principles.¹⁵ The proposed Equality and Non-Discrimination Institution and independent police complaints mechanism have not been introduced, despite Turkey's commitment at its previous UPR to strengthen police accountability in order to ensure effective, independent and impartial investigation of human rights violations.¹⁶

The death penalty

Despite rejecting recommendations to abolish the death penalty at its first review,¹⁷ **Grenada** acknowledged the existence of "a *de facto* moratorium on the death penalty" which "has not been applied for decades".¹⁸ However, Grenada maintains the death penalty in national legislation.

Similarly, the last execution in **Guyana** took place in August 1997; however, despite this, Guyana rejected recommendations at its previous review to establish a formal moratorium on capital punishment with a view to its eventual abolition.¹⁹ Following that UPR, Guyana announced that it would hold public consultations into "the attitude of Guyanese, particularly the families of victims, criminologists, and professionals, on capital punishment and its possible abolition".²⁰ At time of writing, however, such consultations have yet to start.

Discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons

There is no legislation in **Grenada** to protect individuals from discrimination based on their sexual orientation or gender identity and consensual same-sex conduct is criminalized. During its first review, the Grenadian delegation acknowledged that such legislation could be viewed as "discriminatory, as it took away from the freedom of the individual" and further that "it was a policy issue on which the Cabinet would have to deliberate".²¹ Unfortunately, Grenada proceeded to reject recommendations to decriminalize consensual same-sex conduct stating that "this was an offence under domestic legislation"; the delegation committed, however, to "continue to raise awareness of the issue and to encourage

¹³ On 14 February 2012, and on the initiative of the Basque Parliamentary Group (EAJ-PNV), a motion was adopted in the plenary of the Congress of Deputies urging the government to evaluate the Human Rights Plan of the ninth Legislature and to implement a new Human Rights Strategy (See BOCG. Congreso de los Diputados Núm. D-39 de 21/02/2012; http://www.congreso.es/public_oficiales/L10/CONG/BOCG/D/D_039.PDF#page=21). On 8 May, on the initiative of the parliamentary group *Unión, Progreso y Democracia*, a motion was also adopted in the Foreign Affairs Committee engaging the authorities to seek ways to ensure that Spain, regardless of the political changes, had Human Rights Plans guiding the policies of the different governments.

¹⁴ See A/HRC/15/13, recommendation 100.14 (Algeria), 100.22 (Netherlands).

¹⁵ See A/HRC/15/13, paras 13, 18, 31, 36, 60, recommendations 100.9 (Palestine), 100.13 (Saudi Arabia), 100.16 - 24 (Bulgaria, Russia, Egypt, Pakistan, Spain, Senegal, Netherlands, Jordan, Libya).

¹⁶ *Ibid*, recommendation 100.46 (Czech Republic).

¹⁷ A/HRC/15/12, paragraph 57, recommendations 71.38-48 (Slovakia, Spain, Australia, France, Brazil, Uruguay, Slovenia, Germany, United Kingdom, Argentina, Hungary).

¹⁸ A/HRC/15/12, paragraph 57.

¹⁹ A/HRC/15/12, recommendations 71.38 - 48 (Slovakia, Spain, Australia, France, Brazil, Uruguay, Slovenia, Germany, United Kingdom, Argentina, Hungary). See also webcast archives, available at <http://www.un.org/webcast/unhrc/archive.asp?go=100922#g>.

²⁰ http://parliament.gov.gy/documents/resolutions/410-resolutions_nos_23_-_26.pdf

²¹ A/HRC/15/12, paragraph 26.

tolerance”.²² According to local groups working on behalf of LGBTI persons, no public awareness campaigns have been undertaken since the last review. Amnesty International remains concerned that since the last review prosecutions based on Article 431 of the Criminal Code have been reported by local activists campaigning for LGBTI rights. In May 2011, a 41 year old man was charged under Article 431 for allegedly having had consensual sex with a 17 year old male.²³ The charges were later dropped at the first hearing.

In **Guyana**, sex between men is criminalized. Archaic colonial laws, whose constitutionality have been upheld as recently as September 2013, effectively criminalize transgender persons. Following its last UPR in 2010, Guyana announced that it would hold public consultations into “the attitude of Guyanese of any changes in legislative provisions and the criminal code regarding consensual adult same sex relationships and discrimination, perceived or real, against Lesbians, Gays, Bi-Sexual and Transgender persons”.²⁴ At time of writing, however, these consultations have yet to start. A recent report issued in March 2012 by the University of the West Indies which examines the social impact of laws affecting LGBTI people in Guyana, found that the majority of those interviewed were reluctant to report crimes against them for fear that charges would instead be brought against them because of their sexual orientation or gender identity.²⁵ Amnesty International has received numerous reports of violence and discrimination against individuals on the basis of their sexual orientation or gender identity, and is concerned at reports that the police refuse to take down complaints from members of the LGBTI community and often verbally abuse them.

Turkey accepted recommendations to guarantee non-discrimination on the basis of sexual orientation or gender identity, and to ensure the enjoyment by lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals of their human rights.²⁶ Despite these commitments, the government has failed to table Constitutional amendments or domestic legislation to prohibit discrimination on grounds of sexual orientation or gender identity. The absence of such legislation presents a serious barrier to the enjoyment by LGBTI persons of their human rights. LGBTI individuals face a heightened risk of hostile treatment by state officials. This leads to some members of the LGBTI community being routinely and in some instances systematically subjected to various forms of harassment by state officials. For transgender individuals, their often greater visibility means that state officials find more opportunities to harass them and to prevent their access to services. Gay men are also at risk of violence, including sexual violence, within the armed forces.

Violence against women and girls

Guyana accepted a number of recommendations in relation to violence against women and girls, including domestic violence, during its first review.²⁷ Amnesty International welcomes the passing of the Sexual Offences Act on 24 May 2010 as a significant improvement on previous legislation aimed at combatting discrimination based on gender, including by widening the definition of rape and criminalizing marital rape. The Act also envisages an inter-agency task force, the National Task Force for the Prevention of Sexual Violence, which is tasked with developing and implementing a National Plan for the Prevention of Sexual Violence as well as establishing a Sexual Offences Unit. More than a year after its enactment, however, implementation of the Act remains slow: the National Task Force has apparently met only once, not every three months as stipulated in the Act, the National Plan has yet to be drafted, and the Sexual Offences Unit has yet to be created. Women’s rights organizations have also stated that there is insufficient specialized training on the Act’s provisions for officials from the justice, health and law enforcement sectors, and that not enough has been done to inform the public of the Act. Conviction rates for sexual offences remain alarmingly low. According to the Ministry of Legal Affairs, in 2012 and 2013 there were no convictions for sexual offences in a total of 22 cases.²⁸

²² A/HRC/15/60, paragraph 514.

²³ See Associated Press, 25 May 2011, *Police accuses man in Grenada of having gay sex*, http://www.boston.com/news/world/latinamerica/articles/2011/05/25/police_in_grenada_accuse_man_of_having_gay_sex/

²⁴ http://parliament.gov.gy/documents/resolutions/410-resolutions_nos_23_-_26.pdf

²⁵ *Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana*, Christopher Carrico, University of the West Indies, March 2012.

²⁶ A/HRC/15/13, recommendations 100.33 (Norway), 102.11 (Canada).

²⁷ A/HRC/15/14, recommendations 68.14 - 17 (Netherlands, Uruguay, Algeria, Australia).

²⁸ <http://legalaffairs.gov.gy/information/legal-system/15-news-/206-budget-speech-2014>

Guyana's National Domestic Violence Policy, referred to in two recommendations,²⁹ was launched in June 2008 with the aim of providing a multi-sectoral response to domestic violence. Six years later, however, the policy is still not being implemented in an effective and coordinated manner, and the National Oversight Committee on Domestic Violence has not been convened. The policy states that the government will "ensure reasonable access to temporary refuges for survivors". However, there is still only one shelter for victims of domestic violence in Guyana, located in the capital, Georgetown. As with the Sexual Offences Act, there is a need for training of judicial, health and law enforcement officials as well as for public education on the provisions contained in the Domestic Violence Act. Improved collection of statistical data on domestic violence is also required, as well as on cases of sexual violence.

Spain accepted eight recommendations with regard to combating violence against women.³⁰ In addition, Spain considered that it had already implemented recommendations to ensure that victims of such violence have effective access to legal assistance and protection measures, including women with irregular migration status.³¹ Gender-based violence continues to be one of the main human rights challenges in Spain. In a number of investigations carried out by the authorities Amnesty International has identified several obstacles preventing victims of gender-based violence from accessing effective protection, justice and reparation.

Nine years after the entry into force of Spain's Basic Law on Comprehensive Protection Measures against Gender-Based Violence, an evaluation of the operation of the specialized courts on violence against women has still not been carried out. Many women still face obstacles in accessing justice, with the result that many of them are not receiving the protection they are entitled to under the law. Equally, there has never been an evaluation of the many factors which prevent women from filing a complaint under the Law. These obstacles include shortcomings in the availability and quality of legal assistance and lack of due diligence in the judicial investigation, including the dismissal of cases with hardly any investigation, especially those cases where the violence is not obvious.³²

Human rights violations by security and police forces, including torture and other ill-treatment

At its first UPR, **Turkey** accepted a number of recommendations regarding torture and other ill-treatment, including impunity for the perpetrators of such treatment.³³ Amnesty International welcomes that since then, there have been fewer reports of torture and other ill-treatment in official places of detention. Progress in this area has, however, been outweighed by recent reports of routine excessive use of force by police forces against demonstrators and, as mentioned above, the lack of progress toward the establishment of a national preventive mechanism in line with Turkey's obligations as a state party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Seventeen countries made recommendations to **Spain** with regard to human rights violations by police and security forces during its first UPR.³⁴ Despite accepting recommendations to ensure the timely detection and investigation of cases of police abuse, Spain has failed to fulfil its international obligations to adopt legislative, judicial and administrative measures to ensure the right to an effective remedy for anyone who has been subjected to torture or other ill-treatment, and to provide the necessary administrative and judicial framework to prevent impunity for officers charged with such

²⁹ A/HRC/15/14, recommendations 68.14 - 15 (Netherlands, Uruguay).

³⁰ See recommendations: 84.30 (Colombia), 84.31 (Bangladesh), 84.32 (Hungary), 84.33 (Malaysia), 84.34 (United Kingdom), 84.35 (Canada), 84.36 (Italy) and 84.37 (Japan). Said recommendations refer to the adoption of more effective measures to prevent and punish violence against women, and the need to strengthen some of the provisions of the Comprehensive Law (Basic Law 1/2004, of 28 December, on comprehensive protection measures against gender-based violence), to facilitate to medical and legal services for women in distress.

³¹ The recommendations that Spain considers that are implemented or are in the process of implementation included: 85.15 (Austria) 85.16 (Norway) 85.17 (Bolivia) 85.18 (Uruguay) 85.19 (Netherlands).

³² For further information, see Amnesty International, *Qué justicia especializada: A siete años de la Ley Integral contra la Violencia de Género: Obstáculos al acceso y obtención de justicia y protección*, November 2012, available only in Spanish at

<https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/Que%20justicia%20especializada.informe%202012?CMD=VEROBJ&MLKOB=32130865353>

³³ A/HRC/15/3, paragraphs 100-44-100.49 (Switzerland, Denmark, Czech Republic, USA, Germany, Ireland) and 100.70 (Germany).

³⁴ *Ibid*, paras 84.26 - 29, 85.12, 86.21 (Hungary, Azerbaijan, Malaysia, Canada, Netherlands).

crimes. Amnesty International has also documented cases of torture and other ill-treatment, as well as cases of excessive use of force, by the security forces.³⁵ In the majority of these cases, the investigations have been prematurely dismissed, and have therefore not reached the trial stage even when there was credible evidence that torture or other ill-treatment had taken place. Even when cases have reached the trial stage, convictions are rare, and when there has been a conviction, these have mostly been symbolic.

Guyana supported a recommendation to invite the UN Special Rapporteur on Torture to conduct an assessment of torture in the country³⁶ as well as recommendations calling for an open invitation to UN Special Procedures to be issued.³⁷ To Amnesty International's knowledge, no such invitations have been extended. The need for such visits is made all the more pressing by serious allegations of ill-treatment by members of the Guyana Police Force in the recent past, and the absence of an independent body to investigate allegations of abuses committed by members of the security forces in Guyana. The Police Complaints Authority is the body which currently receives such complaints from the public; however, all complaints are merely referred to the Guyana Police Force for investigation. Moreover, the Police Complaints Authority is dependent on the Ministry of Home Affairs for its staffing and financing.

Kenya accepted recommendations to implement reform of the police,³⁸ to provide human rights education for police and prison staff,³⁹ to investigate human rights violations committed by police,⁴⁰ and to establish an independent police oversight authority.⁴¹ Implementation of these recommendations is on-going, although significant challenges remain.

Since 2010, Amnesty International has continued to receive reports of police abuse. Most of these violations have occurred in the context of Kenya's counter-terrorism operations, led by the Anti-Terrorism Police Unit. The 2010 Constitution requires the police to be professional, to prevent corruption, to promote transparency and accountability, and to apply these principles in practice.⁴² New legislation bringing the Kenya Police and the Administration Police under one command structure was enacted in August 2011.⁴³ A National Police Service Commission, mandated to oversee recruitment and appointment of police officers, was established in October 2012. In December 2013, the National Police Service Commission commenced the vetting of police officers. As of May 2014, 196 police officers have been vetted.⁴⁴ The vetting process has faced many challenges, including its temporary suspension due to lack of finances, successful legal suits against the process, and the withdrawal of some of the members of the vetting panel. The process has been criticized for failing to clean up the police service. According to a survey by Usalama Reforms Forum, many Kenyans have lost confidence in the vetting process.⁴⁵

Kenya established the Independent Policing Oversight Authority in May 2012, in line with an accepted recommendation in its first review.⁴⁶ However, since its establishment, it has only published the results of its investigations in one case.⁴⁷ While Amnesty International acknowledges that it takes time to build an institution, frustration is beginning to mount over the slow pace of the implementation of the Policing Oversight Authority's mandate.

³⁵ See *Spain: Adding insult to injury: the effective impunity of police officers in cases of torture and other ill-treatment*, Index: EUR 41/006/2007, November 2007; and *Spain: Adding insult to injury: Police impunity two years on*, EUR 41/010/2009, 3 November 2009

³⁶ *Ibid*, paragraph 70.19 (Canada).

³⁷ *Ibid*, paragraph 70.15 (Brazil); 70.16 (Latvia); 70.17 (Spain); 70.18 (Chile).

³⁸ A/HRC/15/8, paragraphs 101.6 (Zimbabwe), 101.20 – 22 (USA, Netherlands, France)

³⁹ *Ibid*, paragraph 101.33-34 (Finland, Czech Republic)

⁴⁰ *Ibid*, paragraph 101.43-44 (France, UK), 101.72-73 (Spain, Austria)

⁴¹ *Ibid*, paragraph 101.15 (UK)

⁴² Constitution of Kenya, 2010, Art. 244

⁴³ National Police Service Act.

⁴⁴ "Statement by Chairman Johnston Kavuludi during the release of SACPs and ACPs vetting results", available at www.npsc.go.ke/index.php/trendy-scroll-news/121-statement-by-the-chairman-johnston-kavuludi-during-the-release-of-sacps-acps-vetting-results (accessed on 9 June 2014).

⁴⁵ "Police vetting has failed to restore trust", available at www.nation.co.ke/news/Police-vetting-has-failed-to-restore-trust/-/1056/2328650/-/wtjsqz/-/index.html (accesses 26 August 2014).

⁴⁶ A/HRC/15/8, paragraph 101.15 (United Kingdom).

⁴⁷ "Charges against OCS Pangani police station", available at www.ipoa.go.ke/ipoa-media/press-releases/205-oversight-authority-releases-report-on-policing-standards-and-gaps-8.html (accessed on 9 June 2014).

COUNTRY-SPECIFIC ISSUES

Kenya

During its first review, Kenya committed to a range of recommendations to end **impunity of the perpetrators of post-election violence**,⁴⁸ to **cooperate fully with the International Criminal Court**,⁴⁹ and to provide **protection of witnesses**.⁵⁰ Unfortunately, since then Kenya has reneged on all of these commitments.

The 2007-2008 post-election violence resulted in the deaths of more than 1,100 people while an estimated 660,000 people were displaced from their homes.⁵¹ Six years later, most victims are yet to receive justice or reparation. The government continues to fail to conduct thorough and effective investigations into crimes under international law, including crimes against humanity, committed during the post-election violence and to prosecute those suspected of committing them. It has also ignored calls to establish a comprehensive reparations program to address the harm suffered by the victims. Furthermore, the government is seeking to undermine the International Criminal Court's (ICC) cases against three Kenyans accused of masterminding the post-election violence: President Uhuru Kenyatta, Deputy President William Ruto and former journalist Joshua Arap Sang.

During its first UPR, Kenya stated that "commitment to cooperating with the International Criminal Court was not a favour, but an obligation under the International Crimes Act".⁵² However, since the election of President Uhuru Kenyatta and Deputy President William Ruto, the government has initiated or supported political initiatives to undermine the work of the ICC or to stop its trials. In May 2013, a Kenyan official called on the UN Security Council to "terminate" the cases.⁵³ The government has also supported calls by the African Union to the Security Council to defer the prosecutions, as well as African Union decisions to promote non-cooperation with the ICC.⁵⁴ It has also proposed amendments to the Rome Statute seeking to preclude the ICC from prosecuting sitting heads of state.⁵⁵ Furthermore, in September 2013, the National Assembly passed a resolution asking the government to withdraw from the Rome Statute and to repeal the International Crimes Act. Risks relating to witnesses, including intimidation and interference with obtaining their testimony, have also emerged as a significant challenge to the ICC proceedings in Kenya.

In February 2014, the Director of Public Prosecutions announced that a review by a multi-agency task force of more than 4,000 post-election investigation files had failed to identify any prosecutable cases due to lack of evidence, while others had already been investigated and prosecuted as "ordinary" crimes.⁵⁶ However, Amnesty International's research has revealed that many victims and witnesses have been discouraged or prevented by the police from submitting complaints.⁵⁷ Discussions are continuing towards establishing an International Crimes Division of the High Court, which may prosecute some cases relating to the post-election violence. However, the Director of Public Prosecutions has stated that the opportunity to create the International Crimes Division to try such cases "was long lost when Parliament rejected

⁴⁸ A/HRC/15/8, paragraph 101.75 (Netherlands)

⁴⁹ Ibid, paragraph 101.77-83 (Austria, Finland, Republic of Korea, Ireland, Australia, Norway, Portugal).

⁵⁰ Ibid, paragraphs 101.65-69 (USA, Netherlands, Japan, UK, Austria). 101.88 (Sweden).

⁵¹ See Republic of Kenya, *Report of the Commission of Inquiry into the Post-Election Violence* (2008). See also Kenya National Commission on Human Rights, *On the brink of the precipice: A human rights account of Kenya's post-2007 election violence* (August 2008).

⁵² A/HRC/15/8, paragraph 100.

⁵³ Reuters, "Kenya asks U.N. Security Council to end Hague Case against President", 9 May 2013, available at <http://www.reuters.com/article/2013/05/10/us-kenya-icc-un-idUSBRE94900T20130510> (accessed on 26 August 2014).

⁵⁴ Decision on Africa's Relationship with the International Criminal Court, EXT/Assembly/AU/Dec.1 (Oct 2013), para. 10(xi), the African Union decided that Uhuru Kenyatta will not appear before the ICC "until such time as the concerns raised by the AU and its Member States have been adequately addressed by the UN Security Council and the ICC."

⁵⁵ Available at: <https://treaties.un.org/doc/Publication/CN/2013/CN.1026.2013-Eng.pdf> (accessed on 20 August 2014).

⁵⁶ Capital Reporter, "Stakeholders reach consensus on proposed ICD Court", Capital FM news, 9 February 2014, available at: <http://www.capitalfm.co.ke/news/2014/02/stakeholders-reach-consensus-on-proposed-icd-court/> (accessed on 20 August 2014).

⁵⁷ Amnesty International, *Crying for justice: Victims' perspectives on justice for the post-election violence in Kenya* (15 July 2014).

the Special Tribunal Bill” in 2009.⁵⁸ The International Crimes Act currently limits national courts to prosecuting crimes against humanity committed after 1 January 2009, requiring that such crimes committed during the post-election violence be prosecuted as ordinary crimes under domestic law.

The Truth, Justice and Reconciliation Commission, established in 2009 to investigate gross violations of human rights committed in Kenya between December 1963 and February 2008, issued its report in May 2013.⁵⁹ The report contains lists of individuals the Commission has recommended for prosecution, including relating to the 2007/2008 post-election violence, as well as a framework for a reparations program. However, the recommendations of the Commission have yet to be acted upon. In December 2013, the National Assembly amended the Truth, Justice and Reconciliation Act requiring that parliament must consider the report and that it would only be implemented thereafter “in accordance with recommendations of the National Assembly.”⁶⁰ It also amended the law so that the Minister can establish an implementing mechanism based on the recommendations of the National Assembly.⁶¹ More than six months following the amendments to the Act and a year since the publication of the report, parliament has not taken any steps to consider it, raising concern regarding its willingness to do so. Amnesty International is also concerned that, if it does so, parliament may use the new powers it has granted itself and the Minister to undermine the implementation of key recommendations relating to justice and reparations.

Spain

Spain’s compliance with its international obligations in respect of **enforced disappearances** remains mixed. In line with its commitment to do so during its first review,⁶² Spain recognized the competence of the Committee established under the International Convention for the Protection of All Persons from Enforced Disappearance to conduct inquiries and to receive individual complaints, on 24 September 2009 and 5 January 2011 respectively. Spain also, however, rejected a recommendation to “Investigate, punish and redress crimes of enforced disappearance, regardless of the time of their occurrence, in the light of the continuous nature of the crime and in accordance with its international obligations”.⁶³ The Criminal Code does not codify the crime of enforced disappearance in accordance with the requirements of the International Convention for the Protection of All Persons from Enforced Disappearance, to which it became party in 2009. Amnesty International considers that the ordinary crime of illegal detention or kidnapping with whereabouts unknown, as contained in Article 166 of the Criminal Code, does not meet the definition under the Convention since that definition does not satisfy the codification requirement in international law.⁶⁴

Spain continues to deny people fleeing from human rights violations in other countries **access to appropriate asylum procedures**, particularly at the border with Morocco. There have been collective and individual expulsions to Morocco without observing the legal procedures, where those expelled could be at risk of suffering human rights violations, potentially in violation of the principle of *non-refoulement*, which Spain described as the “cornerstone of the Spanish system of international protection” during its first review.⁶⁵ There have also been cases of excessive or unnecessary use of force by the security forces at the borders. In one such case, on 6 February 2014, a group of about 400 migrants, refugees and asylum-seekers originating from Sub-Saharan Africa attempted to cross the border from Morocco to Ceuta. About

⁵⁸ Sam Kiplagat, “Most PEV cases cannot be prosecuted – Tobiko”, The Star, 6 February 2014, available at: <http://www.the-star.co.ke/news/article-153986/most-pev-cases-cannot-be-prosecuted-tobiko> (accessed on 20 August 2014).

⁵⁹ See Republic of Kenya, *Report of the Truth, Justice and Reconciliation Commission* (May 2013). For a summary of the report see <http://www.acordinternational.org/silo/files/kenya-tjrc-summary-report-aug-2013.pdf> (accessed on 14 July 2014).

⁶⁰ See Truth, Justice and Reconciliation (Amendment) Act (No. 44 of 2013) available at http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2013/TruthJusticeandReconciliation_Amendment_Act2013.pdf (accessed on 13 July 2013).

⁶¹ The Truth, Justice and Reconciliation Act had previously required that the mechanism should be established in accordance with the recommendations of the Commission.

⁶² A/HRC/15/6, recommendation 86.13 (Argentina).

⁶³ A/HRC/15/6, recommendation 86.26 (Mexico), A/HRC/15/6/Add.1, paras 20 – 21.

⁶⁴ For further information see Amnesty International, *Spain: Briefing for the Committee on Enforced Disappearances: 5th Session of the Committee, 4-15 November 2013*, AI Index: EUR41/003/13, available at <http://www.amnesty.org/en/library/asset/EUR41/003/2013/en/3483d6cf-1646-4e48-877d-oda01385fbeat/eur410032013en.pdf>

⁶⁵ A/HRC/15/6/Add.1, para. 23, recommendation 86.28 (New Zealand).

250 of them were pushed back to the area of Tarajal, where they attempted to cross the border by swimming to the Spanish side. The Spanish Civil Guard tried to stop them from reaching the Spanish beach by shooting into the water with anti-riot equipment, including rubber bullets. Those who reached the beach were immediately sent back to Moroccan territory. At least 14 individuals lost their lives, apparently due to drowning.

Turkey

In Turkey, legal changes made by the government, notably those made to the Higher Council of Judges and Prosecutors and transfers to new posts of scores of prosecutors and judges have had a damaging impact on the **independence and impartiality of the judiciary**, the subject of an accepted recommendation at Turkey's first UPR.⁶⁶ While the Constitutional Court ruled that the most damaging amendments to the Higher Council of Judges and Prosecutors, including the increased powers of appointment granted to the Minister of Justice, were unconstitutional, the appointments had already been made by the time the Constitutional Court issued its judgment and have not subsequently been rescinded.

Respect for the rights to **freedom of expression, association and assembly** in Turkey has deteriorated since its 2010 review, at which Turkey stressed its commitment to those rights and accepted a number of relevant recommendations.⁶⁷ Despite a number of legislative amendments to provisions frequently used to curtail freedom of expression, restrictive laws remain on the statute books and are used to prosecute activists, journalists and others who criticise the government or who speak out on politically sensitive issues. Prosecutions are also brought under anti-terrorism laws and articles of the Penal Code that undermine the right to freedom of expression.⁶⁸ Self-censorship in the mainstream media has increasingly become a barrier to media freedom as editors and media owners seek to maintain good relations with the government, with whom they have strong business links. Journalists report that their work has been censored or that they have been forced out of their jobs to prevent criticism of the government.⁶⁹ Social media and other internet-based media have also come under increasing pressure. In February 2014, the government passed amendments to the already restrictive Internet Law which increased the powers of the authorities to block or remove content.⁷⁰ The arbitrary blocking of Twitter and YouTube Internet sites in March 2014 followed these changes. Both blocking orders were subsequently lifted following rulings by the Constitutional Court.

Excessive use of force by police officers against demonstrators during or following street protests has become routine, particularly during the "Gezi Park" protests across Turkey in 2013.⁷¹ This has since been replicated at other demonstrations with little or no indication that the authorities have attempted to bring policing in line with international human rights standards on the use of force or even the Ministry of the Interior's own regulations. Accountability has been absent despite Turkey's commitment to strengthen accountability of the police in order to ensure effective, independent and impartial investigation of human rights violations.⁷² Administrative and criminal investigations into alleged abuses by law enforcement officials have been characterised by systemic flaws, resulting in near total impunity for police abuses, with a concomitant chilling effect on the right to freedom of peaceful assembly.⁷³

⁶⁶ A/HRC/15/13, recommendation 100.66 (Australia). See also Amnesty International public statement: *Turkey: Independence and impartiality of the judiciary under threat*, 24 February 2014 (<http://www.amnesty.org/en/library/info/EUR44/003/2014/en>).

⁶⁷ See e.g., A/HRC/15/13, paras 35, 45, 67, 97, recommendations 100.71 (Chile), 100.73 (Japan), 101.5 - 8 (Switzerland, Uruguay, Australia, USA), 102.11 (Canada), 102.24 (Ireland).

⁶⁸ See especially accepted recommendation 101.5 (Switzerland).

⁶⁹ See also Amnesty International report: *Turkey: Adding injustice to injury: One year on from the Gezi Park protests in Turkey*, 10 June 2014, page 30 (<http://www.amnesty.org/en/library/info/EUR44/010/2014/en>).

⁷⁰ See also Amnesty International public statements: *President Gül: Veto restrictive internet law changes*, 12 February 2014 (<http://www.amnesty.org/en/library/info/EUR44/002/2014/en>) and *Amnesty International welcomes Internet law changes recommended by President*, 27 February 2014 (<http://www.amnesty.org/en/library/info/EUR44/004/2014/en>).

⁷¹ See also Amnesty International report: *Turkey: Gezi Park protests: Brutal denial of the right to peaceful assembly in Turkey*, 2 October 2013 (<http://www.amnesty.org/en/library/info/EUR44/022/2013/en>).

⁷² Ibid, recommendation 100.46 (Czech Republic).

⁷³ See also Amnesty International report: *Turkey: Adding injustice to injury: One year on from the Gezi Park protests in Turkey*, 10 June 2014, pages 7-13. (<http://www.amnesty.org/en/library/info/EUR44/010/2014/en>)

