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Spain: Only adequate safeguards will end torture, and claims of torture

As the Spanish government announced that it was taking legal action against four directors of a Basque-language newspaper for "falsely" accusing Civil Guards of acts of torture, Amnesty International today publicly called on the authorities to ensure the prompt, impartial and thorough investigation of the torture allegations.

The claims were made by detainees held incommunicado in connection with the "precautionary closure", in February, of the newspaper Euskaldunon Egunkaria. Amnesty International, which opposes the use of incommunicado detention on the grounds that it facilitates torture, is also deeply concerned by disturbing new legislative proposals to extend the incommunicado regime.

"To sue alleged torture victims, or to describe allegations as false even before there has been a chance to carry out a thorough investigation will only help foster and nourish a climate of impunity, in which fear of reprisals prevents the reporting of possible acts of torture," Amnesty International said.

The Spanish government declared on Monday that it had lodged a complaint with the National Court, in which it accused Martxelo Otamendi Eiguren and three other newspaper directors of "collaborating with an armed band" (the Basque armed group Euskadi Ta Askatasuna, ETA) by making torture claims as part of an ETA-inspired strategy to undermine democratic institutions.

In a letter sent to the Spanish government on Monday -- hours before the Spanish government's announcement -- Amnesty International had expressed concern about reports that Martxelo Otamendi, and other detainees, had been subjected to use of the "bolsa" (asphyxiation with a plastic bag), exhausting physical exercises, threats and simulated execution - forms of torture which, by their very nature, are not easily proved, but which, once alleged, require serious and impartial investigation, whether or not a formal complaint of torture has been brought.

In its letter the organization had also expressed strong reservations about Government statements threatening legal action.

"The Government knows what it must do to guard against false complaints: introduce greater safeguards for detainees that would, at the same time, help protect law enforcement officers from malicious accusations," Amnesty International said.

"Amnesty International does not believe that torture is systematic in Spain, but the Government

must resist the temptation of regarding all torture allegations as part of some ETA-inspired strategy".

The organization added that it was irresponsible to categorically deny the existence of torture or ill-treatment when the Government has so far failed to provide any substantive response to the "profound concern" expressed last November by the (UN) Committee against Torture about the incommunicado regime. The Committee made recommendations which, were they to be adopted by the Government, would make it more difficult to bring false accusations.

"Far from taking steps to implement the Committee's recommendations, the Spanish authorities are planning to extend to a maximum of 13 days the period under which some persons may be held incommunicado once an order of provisional imprisonment has been made," Amnesty International stressed.

Background

On 20 November 2002, Amnesty International called on the Spanish government to take immediate steps to implement the recommendations of the (UN) Committee against Torture, which expressed "deep concern" that people can be held in incommunicado detention for up to five days. While aware of the difficulties for a government facing "grave and frequent acts of criminal violence and terrorism", the Committee stated that torture and ill-treatment were facilitated by the incommunicado regime. The Committee recommended that police (and Civil Guard) interrogations in general be recorded on video as a means both of protecting the detainees and officers who could be falsely accused of torture. The video recordings would have to be made available to the competent judge. The Committee also recommended that medical examinations of detainees in incommunicado detention be held jointly by an (officially appointed) forensic doctor and a doctor who had the trust of the detainees.

Amnesty International itself has repeatedly called for the abrogation of Articles 520 bis and 527 of the Code of Criminal Procedure, which govern the incommunicado regime. It believes that the current, restricted legal safeguards are inadequate, and has called for the right of access to a lawyer from the outset of detention and the right to talk to the lawyer in private.

On 25 February 2003 Amnesty International called for the closure of Euskaldunon Egunkaria to be investigated promptly and noted that one of those detained, Pello Zubiria, had reportedly attempted suicide while being held incommunicado.

Amnesty International's fears about the continuing existence of the incommunicado regime have been exacerbated by a draft law, produced in January 2003, reforming the Code of Criminal Procedure with regard to provisional imprisonment. Article 509 of the draft law provides that the investigating judge or court can extend incommunicado detention beyond the current five-day maximum for some persons against whom a judge has made a provisional imprisonment order. On this basis a person could be held incommunicado - first on police or Civil Guard premises and, after five days, in prison - for a total of as much as 13 days.

Public Document

For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566
Amnesty International, 1 Easton St., London WC1X 0DW. web: <http://www.amnesty.org>

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