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## **Spain: No global exception when investigating the crimes of the past**

Amnesty International has called on the Spanish government to comply with its international obligations regarding past crimes and to protect victims' rights by ensuring there is an effective judicial enquiry into the enforced disappearances committed during the Civil War and Franco's regime (1936-1975).

This request was made as Amnesty International launches a new report refuting myths and distortions about the investigation of enforced disappearances and other crimes carried out against international law at that time. This report follows recommendations made by the UN Human Rights Committee on 31 October, calling on the Spanish authorities to comply with their international obligations as a State Party to the International Covenant on Civil and Political Rights.

The Committee was concerned about long-standing obstacles faced by victims to obtain justice, truth and reparation and called on the Spanish authorities to take measures to repeal the 1977 Amnesty Law and guarantee that crimes under international law will not be barred by statutes of limitations. It also called on the government to appoint an independent commission to establish the historic truth about human rights violations and violations to humanitarian international law committed during the Civil War and Franco's regime, and to ensure the victims' remains are located, exhumed and identified, as well as restored to their relatives.

Amnesty International believes that Spain, currently the country with the largest number of cases of enforced disappearance brought to its courts, has prolonged a situation of injustice for too long. The organization also believes that Spain could find itself among the few countries in the world turning its back on its obligation to investigate crimes of enforced disappearance and other crimes under international law.

### **Myths and distortions**

The Spanish Prosecutor's Office has challenged the inquiry by Judge Garzón, who led the case against former Chilean President Augusto Pinochet, into past crimes on 20 October 2008, calling for the enforcement of the 1977 Amnesty Law and the lapsing of an offence under statutory limitations, amongst other reasons. This could establish impunity mechanisms that are that are not in compliance with the rules applicable to crimes under international law.

Any State that disregards the rights of the victims, under the premise that too much time has passed, places itself beyond internationally recognised law. Blocking the prosecution of enforced disappearances undermines international law, which is part of the Spanish legal system.

In light of this situation, Amnesty International has published a document "Myths and distortions" and the report "[Spain: The obligation to investigate the crimes of the past and guarantee the rights of the victims of enforced disappearance during the Civil War and Franco's regime](#)". Both documents highlight that the attempts by the Prosecutor's Office to stop the proceedings are absolutely incompatible with international

law, and even with Spanish law.

In its appeal, the Prosecutor's Office argued that the 2007 "Historic Memory" Law does not allow judicial enquiries because it already provides appropriate and sufficient measures for the victims. However, the Law itself says that "[The provisions of this Law are] compatible with taking the legal action and having access to the ordinary and extraordinary court proceedings established in the laws or the international treaties or covenants ratified by Spain".

Amnesty International has analysed the way that more than 25 countries have dealt with the issue of enforced disappearances committed in the past. These were the countries that accumulated the largest number of enforced disappearances reported to the UN Working Group on Enforced Disappearances. The Working Group reported that the Spanish government had failed to submit any substantive information to establish the whereabouts of three people whose disappearance had been reported to this Group.

Spain is also one of the countries that the UN Human Rights Committee had to remind that neither amnesty laws, nor the lapsing of the offences by operation of the statute of limitation, can be used as a reason for not prosecuting this kind of crime.

"Investigations on crimes against humanity committed in other countries have been promoted on many occasions in Spain so how can the Prosecutor's Office question or oppose complying with the obligation to investigate serious crimes committed during the Civil War and Franco's regime?" said Esteban Beltrán, Director of Amnesty International Spain. "Spain cannot appear before the international community as a State that infringes its international obligations."

### **Background**

On 16 October, the number 5 Central First-Instance Criminal Court of the National Court recognised its ability to investigate the crimes of enforced disappearance committed during the Civil War and Franco's regime: an essential step to comply with the international obligation of the State to guarantee justice, truth and reparation to the victims of these awful crimes.

On 20 October 2008, the Prosecutor's Office submitted an appeal to the National Criminal Court against the order to proceed with the investigation.

For over a century, crimes against humanity have been recognised by international law for the particularly outrageous nature on the conscience of humankind. Enforced disappearances, or crimes of unlawful detention, without providing information as to the whereabouts of the detainees, are the most serious kind of crime against international law.

The international responsibility of the State regarding victims can also be demanded. The governments of the transition to democracy, and later governments, did not deal with the rights of those who suffered serious abuses and were deprived of effective reparation and appeal. The perpetrators of such crimes were not brought to justice nor was there an impartial investigation to establish the crimes of the past.

The right to know the fate of the disappeared is an inalienable right of the victims and one which cannot be barred by statutes of limitations. It remains a permanent crime as long as the whereabouts of the victims are not established.

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