



21 September 2010
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**UN Human Rights Council
Fifteenth, 13 September – 1 October 2010**

**Item 6:
Consideration of UPR reports**

Spain

Mr. President,

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.² Recommendations to address this shortcoming were made during the review.³ Amnesty International is disappointed that these were rejected by Spain.⁴ In November 2009, the Committee against Torture had requested in its Concluding Observations that two important elements be added to the definition of torture in Article 174 to align it with the Convention. The first was to specify that torture can also be committed by "a person acting in an official capacity" – as well as by "an authority or public official", as Article 174 currently provides. The second was to specify that the purposes of torture in Article 174 also include "intimidating or coercing the person subjected to torture or a third person". Amnesty International urges Spain to act with urgency on the Committee's conclusions.

Mr. President,

Amnesty International has consistently called on Spain to investigate crimes committed during the civil war (1936-39) and the Franco era and to ensure that no amnesty law is applied to crimes against humanity. We strongly object to the charges against the investigating judge for having investigated the forced disappearance of

¹ Organic Law 5/2010 of 22 June 2010

² Paragraph 7 of the Concluding observations.

³ A/HRC/15/6, paragraph 86, recommendations 19 and 20 (Iran and Czech Republic).

⁴ A/HRC/15/6/Add.1, paragraphs 10 and 11.

more than 114,000 people. 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 offence of "illegal detention without knowing the whereabouts" is treated as an ordinary crime and is subject to the application of amnesties and limitation periods. We note with disappointment that Spain has rejected the recommendation to investigate, punish and redress crimes of enforced disappearance in accordance with international law and call on Spain to urgently reconsider its position.⁵

Mr. President,

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. We are also pleased to note that Spain has indicated its support of additional recommendations to ensure a time frame for concrete action and other comprehensive measures.⁶

Finally, Mr President,

Amnesty International is extremely disappointed at Spain's refusal to review its regime of incommunicado detention.⁷ According to this, 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. We regularly receive allegations of torture and other ill-treatment during incommunicado detention, and international human rights bodies have repeatedly called for its abolition.⁸ We strongly urge Spain to reconsider this recommendation without delay.

Thank you, Mr President.

⁵ A/HRC/15/6, paragraph 86.26 (Mexico).

⁶ Ibid, paragraphs 86, recommendations 17 and 18 (Belgium and Iran).

⁷ Ibid, paragraph 87, recommendation 5 (Costa Rica).

⁸ See the draft Concluding observations of the Human Rights Committee, Spain, UN Doc CCPR/C/ESP/CO/5, 27 October 2008, para 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, para 32.