

Amnesty International condemns Spain's Incommunicado Detention Law

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7 October 2009

A report published last month by the human rights group Amnesty International criticised the Spanish legal system for breaches of international guidelines on the treatment of detainees held “incommunicado.”

The report, “Spain: Out of the shadows—time to end incommunicado detention,” is a detailed assessment of the practice whereby arrested suspects can be held up to five days without access to an independent lawyer, communication with a family member, or a doctor of their choosing. If the detainee is accused of terror charges the maximum incommunicado detention is increased to 13 days.

In effect suspects are disappeared during this period, until a decision is made to either take them through the criminal courts or release them without charge. As well as the denial of basic legal rights to the suspect, the law also places extreme stress on family members who have no idea what has happened to their loved ones.

The report draws attention to witness statements that abuses amounting to torture have been used against those held, including beatings, sleep deprivation and various forms of intimidation. Efforts by human rights organisations to challenge the law on the basis that it encourages a climate of impunity and acts of torture by the police have gone unheeded by the Spanish government.

The report highlights five key areas where current legislation infringes on internationally recognised standards on human rights for detainees in custody:

1. Individuals held incommunicado do not have the right to be assisted by a lawyer of their own choice.

2. Individuals held incommunicado do not have the right to consult with a lawyer in private at any time during their detention incommunicado.

3. Individuals held incommunicado do not have the right to communicate, or have communicated, to a

family member or other person of their choice the fact and place of their detention. Foreign nationals do not have the right to have such information communicated to their consulate.

4. Individuals held incommunicado do not have the right to a medical examination by a doctor of their own choice.

5. Individuals held on suspicion of involvement in terrorism-related offences or organised crime—whether or not they are being held incommunicado—may be held in police custody for up to five days after arrest before being presented to a judicial authority.

Nicola Duckworth, Amnesty International Europe and Central Asia programme director, said, “Incommunicado detention must be relegated to the past. No other European Union country maintains a detention regime with such severe restrictions on the rights of detainees. It is inadmissible that in present day Spain anyone who is arrested for whatever reason should disappear as if in a black hole for days on end. Such lack of transparency can be used as a veil to hide human rights violations. While held incommunicado, detainees cannot talk to a lawyer or a doctor of their choice. Their families live in stress not knowing what has happened to them and many detainees held incommunicado report that they have been tortured or ill-treated, but such allegations are rarely investigated.”

As well as threats and abuse being directed towards detainees, there have been cases where lawyers were intimidated and badly treated by police, further undermining adequate defence of the accused. Lawyers complained that judges routinely authorise police requests to hold suspects for the maximum period without proper scrutiny. One lawyer commented, “‘Copy-paste’ put an end to detainees’ rights.”

The report cites one of the most serious cases to come

to public attention, involving Moroccan born Mohammed Fahsi. He was arrested in January 2006 on charges that he was involved in sending fighters to assist in the anti-occupation insurgency in Iraq. During his incommunicado detention, he was denied access to his own lawyer and has alleged that he was tortured. He stated that a state-appointed doctor and investigating judge ignored his complaints. No criminal investigation into these allegations has been opened, with straight denials proffered by both the General Council of the Judiciary and the Madrid public prosecutor.

Fahsi's wife said that the police gave her no information about where her husband had been taken. She told Amnesty International, "For days and days it was like he had just vanished. Nobody knew where he was. It wasn't until two weeks after he was arrested that I got a phone call from him, in prison. He cried when he spoke to me."

She added that his treatment was in many ways comparable to that of the prisoners at Guantanamo Bay. In the days when he was held incommunicado he suffered from "cold, sleep deprivation, extreme light, beating, threats, forcing them to denounce their religion, trying to coerce them to lie and incriminate fellow detainees."

Despite more abuses such as these coming to light and steady criticism from many international human rights groups—including United Nations' bodies and the Council of Europe's Committee for the Prevention of Torture (CPT)—the incommunicado detention legislation has become increasingly repressive under successive Spanish governments over the last decade.

As long ago as 1995 the UN Special Rapporteur on torture said, "Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal and persons held incommunicado should be released without delay. Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention."

In 1997 the UN Committee against Torture (CAT) stated in its concluding observations on Spain, "Notwithstanding the legal guarantees as to the conditions under which it can be imposed, there are cases of prolonged detention incommunicado...which seems to facilitate the practice of torture. Most of these complaints concern torture inflicted during such periods."

In the wake of the invasion of Iraq and the Madrid train bombings in 2003, the maximum detention period was actually increased from the previous five to 13 days. Terrorist attacks in Britain were used to justify new laws on detaining suspects without charge for an extended period up to 28 days. In both cases the legislation is defended as being necessary to protect the public and defend "national security." But in the years since 9/11 more than 1,000 people have been arrested under anti-terrorism laws, of which less than 50 have been convicted.

The report highlights the fact that the reaction of the Spanish authorities to critics of its detention laws has taken the crude form of dismissing them as tactics of an "organised criminal strategy to discredit the state." The report warns, "Where such a reaction is made before any investigation into the substance of these allegations has taken place it can only contribute to a climate of impunity for acts of torture and other ill-treatment."



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