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Ms Kate Fox  
Secretary  
UN Human Rights Committee  
Office of the United Nations  
High Commissioner for Human Rights  
UNOG-OHCHR  
1211 Geneva 10, Switzerland

25 July 2014

Dear Ms Fox,

**Re: List of issues for the consideration of Spain's sixth periodic report under the International Covenant on Civil and Political Rights (ICCPR)**

I am writing to provide information to the United Nations (UN) Human Rights Committee (the Committee) in advance of the Committee's preparations to draw up its List of Issues for the consideration of Spain's sixth periodic report. Amnesty International is concerned that, since the Committee's review of Spain in October 2008, the Spanish authorities have failed to address impunity and ensure truth, justice and reparation for crimes under international law committed between 1936 and 1975. The organization is further concerned by the excessive use of force by the authorities in response to protests against austerity measures and high levels of unemployment, the regressive changes in laws that restrict the access of women and girls to safe and legal abortion services, illegal expulsion of migrants and the failure to guarantee that women survivors of violence can access justice.

**Article 2 - Measures of domestic implementation**

Lack of an adequate definition of torture and enforced disappearance in the Criminal Code and, therefore, failure to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant (art.2(2)), in particular, the right to a remedy

There have been various reforms of the Spanish Criminal Code, but they have all failed to include torture and enforced disappearance as separate crimes in the Criminal Code, within the category of crimes under international law.

The definition of torture contained in the Criminal Code fails to implement the definition of Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into national law. For example, it does not explicitly exclude "due obedience" and "superior orders" as justifications for acts of torture. The flawed definition of torture, does not recognize individuals acting on the instigation of, or with the consent or acquiescence of public officials as responsible for torture. The law also does not specifically state that "sexual violence" may amount to torture or other ill-treatment when committed in custody.

The Spanish 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 Spain is a party. On the contrary, 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. As noted by other NGOs,

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the definition of Article 166 of the Code is far from satisfying the codification in international law and is lacking in essential elements.<sup>1</sup> In reviewing the report of the Spanish government in November 2013, the UN Committee on Enforced Disappearances also recommended that the state party make enforced disappearance a separate crime as defined under the Convention.<sup>2</sup>

### Truth, justice and reparation for the victims of the civil war and Francoism

The right to truth, justice and reparation for the victims of the Civil War and Francoism (1936-1975) are denied in Spain, and Amnesty International has documented the lack of response by the Spanish authorities. In addition the Judiciary is reluctant to investigate those crimes, based either on the 1977 Amnesty Law or the applicability of statute of limitations. Likewise, the organization notes a continuing trend by Spanish investigating judges to close such cases in preliminary stages without any investigation taking place.

This trend increased following the Supreme Court ruling of 27 February 2012, where the Tribunal found that the 1977 Amnesty Law, as well as statutory limitations, may apply to crimes under international law committed in the past. In addition, from the organization's standpoint the Supreme Court has made an incorrect interpretation of the principle of legality in criminal proceedings, in violation of article 15(2) of ICCPR. Several UN mechanisms have expressed a similar concern about this.<sup>3</sup>

In addition, Amnesty International has found that the Spanish authorities are also reluctant to cooperate with Argentinean courts which are investigating, based on universal jurisdiction, crimes under international law committed in Spain in the past.<sup>4</sup>

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<sup>1</sup> American Association of Jurists, Written Statement to the UN Human Rights Council, A/HRC/13/NGO/91 26<sup>th</sup> February 2010, pp. 2.

<sup>2</sup> Committee on Enforced Disappearances, Concluding Observations on Spain, December 2013, UN Doc: CED/C/ESP/CO/1

<sup>3</sup> For example, the Human Rights Committee has recommended Spain to repeal the Amnesty Law, take the necessary legislative measures to guarantee recognition by the domestic courts of the non-applicability of a statute of limitations to crimes against humanity; and setting up a commission of independent experts to establish the truth (Human Rights Committee, Concluding observations, Spain. UN. Doc. CCPR/C/ESP/CO/5 (2009), 5 January 2009, Para. 9).

The Council of Europe has urged the government to set a committee to investigate violations of human rights committed under the Franco regime and submit said report to the Council of Europe (Parliamentary Assembly of the Council of Europe, Recommendation 1736 (2006), 17 March 2006, condemning Franco's dictatorship. Doc. 10737, Recommendation 8.2.1). It should be taken into account that the Council of Europe, in Resolution 828 (1984) on enforced disappearances, expressly declares that they may not be covered by amnesty laws (Para. 13a).

The UN Committee against Torture has recommended Spain to ensure that acts of torture, which include enforced disappearances, are not offences subject to amnesty; find out what happened to the missing persons, not be constrained by the principle of legality or the statute of limitation, and ensure that the victim of an act of torture obtains redress (Committee against Torture, Concluding observations, CAT/C/ESP/CO/5, 19 November 2009, Para. 21).

The UN Working Group on Enforced or Involuntary Disappearances has reminded the Government of its obligation to carry out thorough and impartial investigations for as long as the fate of the victim of enforced disappearance remains unclarified (Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/13/31, 21 December 2009, Para. 502).

<sup>4</sup> For further information, see Amnesty International, *Casos cerrados, heridas abiertas: El desamparo de las víctimas de la Guerra Civil y el franquismo en España*, mayo de 2012; and Amnesty International, *El tiempo pasa la impunidad permanece: La jurisdicción universal, una herramienta contra la impunidad para las víctimas de la Guerra Civil*, June 2013, available in Spanish at <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/EUR4140013-25119%20EI%20tiempo%20pasa%20la%20impunidad%20permanece%20Informe?CMD=VEROBJ&MLKOB=32463093939> and Executive Summary available in English at <http://www.amnesty.ca/sites/default/files/spainispainreportsummary17june13.pdf>

## **Article 7 - Security and counter-terrorism measures**

The authorities maintain incommunicado detention in their legislation for suspects of terrorism-related offences.

Incommunicado detention does not only adversely impact important rights of the detainees held incommunicado which are essential to ensure a fair trial – including prompt, effective access to legal representation - but has also been strongly criticized by international human rights bodies for facilitating torture and other ill-treatment of detainees.<sup>5</sup>

## **Articles 7, 19, 21, 22 – Freedom of peaceful assembly, freedom of expression**

The Law regulating the right of assembly does not envisage or recognize the right to hold spontaneous demonstrations, provided for by international standards. In addition, the reforms of the Criminal Code and the Public Safety Law, announced by the government, put at risk the exercise of the right to peaceful assembly and expression, as explained below.<sup>6</sup>

The economic crisis, the high unemployment among the population and the austerity measures put in place by the Spanish government have led thousands of people to demand their rights by participating in assemblies. Most of these demonstrations have been held peacefully, although in some cases there have been isolated acts of violence on the part of the demonstrators.

However, there have been reports of excessive use of force by members of the law enforcement agencies, even including against journalists and photographers exercising their right to seek, receive and impart information, as well as inappropriate use and misuse of anti-riot gear during demonstrations or when carrying out arrests. In addition, there has been a lack of proper internal and judicial investigations of complaints made when these abuses have occurred. As the social protests increased, there was also an increase in the number of administrative penalties against those participating in the demonstrations, including on the basis of having participated in peaceful assemblies.

The response of the public authorities has been seeking to stigmatize, or even attempting to criminalize, social movements by, for example, bringing criminal charges against the organisers.<sup>7</sup>

## **Articles 2, 3, 6, 7, 19, 26 – The draft bill on abortion**

A draft bill restricting abortion is currently pending.<sup>8</sup> This retrogressive measure would render null the existing Law 2/2010 on *Sexual and Reproductive Health and Voluntary Termination of Abortion*. This

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<sup>5</sup> See, for example, the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, mission to Spain, 7 – 14 May 2008, UN Doc. A/HRC/10/3/Add.2

<sup>6</sup> For further information see Amnesty International, *Spain, the right to protest under threat*, AI Index: EUR 41/001/2014, April 2014, available at <http://www.amnesty.org/en/library/asset/EUR41/001/2014/en/019b583d-9f93-484f-b7e0-e499126e2ebc/eur410012014en.pdf>

<sup>7</sup> Amnesty International expressed its concern by the attempt to bring criminal charges against the organisers of the demonstration of 25 September 2012 in Madrid, for “crimes against the High Institutions of the State”. In the end, in October 2012, the investigating judge closed the case as there was no evidence that such criminal acts had taken place. The case was brought before the National High Court, which is competent to try particularly serious crimes. For further information, see Amnesty International, *Spain, the right to protest under threat*, AI Index: EUR 41/001/2014, April 2014, available at <http://www.amnesty.org/en/library/asset/EUR41/001/2014/en/019b583d-9f93-484f-b7e0-e499126e2ebc/eur410012014en.pdf>

<sup>8</sup> The draft bill is titled *Organic Law for the protection of the life of the conceived and the rights of the pregnant woman*.

Law was a welcome legislative development when it was adopted in 2010, prior to which Spain had one of the most restrictive abortion laws in Europe. The draft bill modifies the existing law by restricting abortion only to cases where the pregnancy poses a serious threat to the life or mental or physical health of the woman, in cases of fetal anomalies incompatible with life, and in cases of rape. In addition, it proposes humiliating and unrealistic barriers for women and girls to overcome before they can access abortion even in these limited circumstances, including a mandatory waiting period of 7 days, compulsory biased counselling and the requirement that rape survivors report the crimes to the police—a particular problem for victims of domestic violence or incest.

It also imposes punishments for health professionals if they are found to have provided abortion services outside the limits set out in the bill, including having their license to practise medicine revoked and facing prison terms. This would create a climate of fear amongst those who provide healthcare and discourage them from responding to the needs of affected women and girls.

If passed, the bill would harm the health of women and girls and would disproportionately affect young and poor women who do not have the necessary means to travel abroad to access safe and legal abortion services. This would cause an increase in the number of women and girls who resort to dangerous, unsafe, clandestine and illegal procedures, risking their health, well-being and even their lives.<sup>9</sup>

Further, as abortion is only required by women and girls, criminal laws on abortion disproportionately impact on women, preventing their full and effective enjoyment of protections offered under Article 2 and 3 of the ICCPR.<sup>10</sup>

#### **Article 12, 13 - Rights of migrants, refugees and asylum seekers**

Spain has continued to prevent people fleeing from human rights violations in third countries to have access to the asylum procedures, particularly in the border with Morocco. There have been collective and individual expulsions to Morocco, where they could be at risk of suffering human rights violations, without observance of the legal procedure; there have also been cases of excessive or unnecessary use of force by the security forces operating on the borders.<sup>11</sup>

#### **Articles 2, 3, 6, 7 – Violence against women**

Seven years after the entry into force of the *Basic Law against gender-based violence* in January 2005, for many women access to justice is still precarious and many of them are not receiving the necessary protection.

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<sup>9</sup> The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the World Health Organization (WHO) and the Council of Europe have recalled that restrictive laws on access to abortion do not succeed in reducing the number of abortions, but, on the contrary, increase the number of illegal and unsafe abortions and lead to increased maternal mortality. See *United Nations Special Rapporteur on the Right to Health. Report to the Human Rights Council. 18th session (A/66/254) 3 August 2011 (paragraph 25); WHO Safe abortion: technical and policy guidance for health systems. 2012 (page 90) and Resolution 1607 (2008) 1 of the Parliamentary Assembly of the Council of Europe (paragraph 4).*

<sup>10</sup> The Human Rights Committee has repeatedly raised concerns about the criminalization of abortion (Human Rights Committee, Concluding Observations: Argentina, para. 13, U.N. Doc. CCPR/C/ARG/CO/4 (2010); El Salvador, para. 10, U.N. Doc. CCPR/C/SLV/CO/6 (2010); Mexico, para. 10, U.N. Doc. CCPR/C/MEX/CO/5 (2010); Monaco, para. 10, U.N. Doc. CCPR/C/MCO/CO/2 (2008); Nicaragua, para.13, U.N. Doc. CCPR/C/NIC/CO/3 (2008)).

<sup>11</sup> Thus, in the morning of 6 February 2014, a group of around 400 sub-Saharan migrants, refugees and asylum-seekers attempted to cross the border from Morocco to Ceuta. About 250 of them were repelled in the area of Tarajal, and attempted to cross the border by swimming. While in the water, the Spanish Civil Guard tried to stop them from getting to the Spanish beach and fired towards the sea anti-riot equipment including rubber bullets. Those who managed to get to the beach, were sent back to Moroccan territory. At least 15 people died, apparently drowned.

Since the entry into force of this law, over 500 women have been killed by their partners and former partners. While the authorities justify their inaction by highlighting the failure of women to report abuses, there has never been an evaluation of the many factors involved in preventing women from filing a complaint. The obstacles include shortcomings in the availability and quality of the legal assistance, and the lack of due diligence in the judicial investigation, resulting in dismissal of cases.<sup>12</sup>

As of 1 September 2012 and through Royal Decree-Law 16/2012, the Spanish government limited the right to health of migrants, including women, with irregular administrative status. This recent health reform undermines the prevention and detection of cases of gender based violence, and makes the protection of migrant women who are victims of gender based violence extremely difficult.<sup>13</sup>

Further information on the issues raised above is available in the documents that are referred to in this letter. However, please do not hesitate to contact me should you require additional information.

Yours sincerely,



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International Advocacy Programme

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<sup>12</sup> 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>

<sup>13</sup> For further information, see Amnesty International, *El laberinto de la exclusión sanitaria: Vulneraciones del derecho a la salud en las Islas Baleares*, June 2013, available only in Spanish at <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/sanidad%20españa?CMD=VEROBJ&MLKOB=32500201246>