

**SHADOW REPORT**  
**To the**  
**COMMITTEE AGAINST TORTURE**  
**Forty-Third Session – 2-20 November 2009**

Information for the consideration of the Fifth Periodic Report of  
the Government of Spain

Submitted by Women's Link Worldwide

October, 2009

**COMMITTEE AGAINST TORTURE**  
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**Introduction**

1. Women's Link Worldwide is an international human rights non-profit organization working to ensure that gender equality is a reality worldwide. In this report, Women's Link would like to address question 13 of the List of Issues and draw attention to the information provided by the Spanish government regarding the exercise of universal jurisdiction for the crime of torture. Women's Link would like to express its concern over the *Atenco Case*, which was not mentioned by the government in its response to the Committee's question regarding universal jurisdiction. This case concerns the torture of a Spanish citizen in Mexico, and has hitherto been held inadmissible by the Spanish Courts.
2. Women's Link recognizes the application of Article 5 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter Torture Convention), implemented in Spanish law by Article 23.4 of Organic Law 6/1985,<sup>i</sup> in the cases enumerated in the government's response. While the response to question 13 by the government highlighted some of the jurisprudence developed under Article 23.4, it failed to mention the *Atenco case*, which has thus far been held inadmissible by the Courts. The declaration of inadmissibility under the exercise of universal jurisdiction for the crime of torture in certain cases leads to impunity and results in a breach of Spain's obligations under Article 5 of the Torture Convention.

**The *Atenco case***

3. On May 4, 2006, Ms. Cristina Valls Fernandez, a Spanish national, was detained in San Salvador Atenco, State of Mexico (Mexico), by members of various police forces during an operation in which over 200 people, including 47 women, were detained. The majority of the persons detained, including Ms.

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<sup>i</sup> Ley Orgánica 6/1985, de 1 de Julio, del Poder Judicial.

Valls, were subjected to abuse and torture and many of the women testified to having suffered sexual assault and rape as torture.<sup>ii</sup>

4. On January 25, 2008, the Spanish citizen Ms. Cristina Valls Fernandez and Women's Link Worldwide presented a criminal complaint to the *Audiencia Nacional* in Spain under the principle of universal jurisdiction for the crime of torture, including sexual violence and rape as torture suffered by Ms. Valls. Ms. Valls was arbitrarily detained and subjected to physical, sexual and psychological torture by the Mexican authorities while under their custody in San Salvador, Atenco. Following her arbitrary detention, she was deported contrary to a court order and denied her due process. Ms. Valls therefore decided to seek redress in Spain.
5. Following the filing of the complaint, on the 3<sup>rd</sup> of March 2008, the judge in the *Audiencia Nacional* (Juzgado Central de Instruccion n° 3) requested information from the Mexican authorities as to whether criminal investigations or proceedings had been initiated in Mexico, and specifically concerning Ms. Valls, in order to ascertain the admissibility of the case. On the 11<sup>th</sup> of June, 2008, the Mexican authorities responded to the judicial request in a three page document which mentioned that investigations were taking place but failed to provide any information regarding the stage of the criminal proceedings; whether the persons responsible had been identified; the crimes under investigation and, if these investigations had resulted in criminal convictions. The information provided made no mention of any investigation or proceedings relating to Ms. Valls for the crime of torture in San Salvador Atenco, and there was no indication that real and effective investigations were taking place. In short, although the Mexican authorities stated that they had opened three investigations, they failed to provide any information as to whether anyone had been identified for prosecution or whether these investigations had resulted in legal repercussions for the perpetrators of torture.
6. On the 29<sup>th</sup> of April 2008, 11 Mexican women who, like Ms. Valls, were also detained and subjected to torture, including sexual violence and rape at the hands of the Mexican authorities, in San Salvador Atenco, filed a complaint before the Inter-American Commission of Human Rights. The complaint denounces the Mexican government's failure to comply with its obligation to investigate and punish those responsible for the violation of fundamental human rights, suffered by the 11 women, and demonstrates the lack of effective

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<sup>ii</sup> The Committee against Torture has previously expressed its concern over the events that took place in San Salvador Atenco, highlighting the excessive use of force employed by the police, the arbitrary nature of the detentions and the abuse of persons held incommunicado in its report: "Conclusions and Recommendations to Mexico" 6 February 2007 CAT/C/MEX/CO/4.

investigation into the events which occurred in San Salvador, Atenco. The complaint is currently before the Commission.

7. On the 7<sup>th</sup> of July 2008, the judge of the *Audiencia Nacional* held that due to the ongoing investigations in Mexico, the complaint was inadmissible. Women's Link Worldwide appealed this decision to the Criminal Chamber of the *Audiencia Nacional*, on behalf of Ms. Valls on the grounds that the applicant's right to an effective judicial remedy (Article 24 of the Spanish Constitution) had been violated considering that no effective investigation had taken place. Furthermore, the case is admissible under Spanish law since concurrent jurisdiction is clearly available under the jurisprudence of the Spanish courts. The only limitation recognized by Organic Law 23.4 to the exercise of universal jurisdiction is the principle of *non bis in idem*, or the rule against double jeopardy whereby a person may not be tried for the same crime twice.
8. On the 20<sup>th</sup> of November 2008, Ms. Cristina Valls was notified that she was to be called as a witness and that an International Rogatory Commission had been established by the Special Prosecutor for Crimes of Violence against Women and Trafficking in Human Beings (Fiscalía Especial para los Delitos de Violencia contra las Mujeres y la Trata de Personas) under the direction of the Director of Public Prosecutions of Mexico (Procuraduría General de la República de los Estados Unidos Mexicanos). The Prosecutor requested the Commission to investigate the allegations of torture specifically concerning the events in San Salvador, Atenco relating to Ms. Valls.
9. The investigation carried out by the Rogatory Commission was ineffective and failed to comply with the standards set down in international law. The file of the Rogatory Commission included an unsigned statement taken from Ms. Valls during the time period in which she was subjected to torture; thus clearly infringing Article 15 of the Convention against Torture, which states that this evidence is inadmissible. Furthermore, the questions posed by the Commission to Ms. Valls did not seek to determine those who were responsible for perpetrating the crime. This is evidenced by the following questions posed by the Commission: :
  - Question 17: What was the witness thinking during the time that she was being sexually abused?
  - Question 22: Does the witness like being a woman? If so why and if not, why not?
  - Question 23: How was the witness raised to be a woman?
  - Question 29: Does the witness have any worries at the moment?

Ms. Valls decided to exercise her right to refuse to cooperate with the Commission considering that the investigation violated her right to integrity and privacy, and did not respect the national and international standards or the Istanbul Protocol regarding the appropriate manner to investigate the crime of torture. Furthermore, the questions did not effectively seek to investigate the crimes alleged nor identify the individuals responsible; instead the questions re-victimize the injured party.

10. On the 14<sup>th</sup> of January 2009, the Second Section of the Criminal Chamber of the *Audiencia Nacional*, confirmed the first instance decision of the *Audiencia Nacional* and held that the case was inadmissible because of the alleged investigations taking place in Mexico by the above mentioned Special Prosecutor for Crimes of Violence against Women and Trafficking in Human Beings. The case is currently on appeal to the Spanish Constitutional Court which will ultimately decide on the admissibility of the case.
11. It is also important to highlight that in Mexico, the Supreme Court has confirmed in an advisory opinion that the Mexican authorities breached fundamental human rights concerning the events in Atenco and has identified those responsible for the events. Despite the opinion of the Supreme Court there have yet to be any prosecutions for the abuses and torture suffered by those arbitrarily detained.
12. Investigations into torture have to be in compliance with three basic conditions: effectiveness, impartiality and they must be carried out within a reasonable time frame. In the instant case, none of the criteria have been fulfilled by the Spanish authorities. The judge in the first instance did not carry out any activity to further investigate and verify the allegations of torture submitted in the complaint. In fact, the judge fully accepted the reply given by the Mexican Prosecutor without even investigating the facts or requesting a statement from Ms. Valls. This is particularly problematic considering that 11 other women have brought a case to the Commission stating that there have been no effective investigations of the events in San Salvador Atenco and that there have been no prosecutions despite the fact that the Supreme Court has named those responsible in their advisory opinion.
13. As previously stated, the Spanish courts have the competence to investigate the torture suffered by the Spanish citizen, Ms. Valls, under article 23.4 of the Organic Law, which provides for concurrent jurisdiction over international crimes such as torture. If the mere pretense of instigating an investigation works to deny jurisdiction to States with universal jurisdiction laws, the result will be that countries will be able to conduct fraudulent investigations to block other States from investigating hideous crimes such as torture, adding to the culture of

impunity. The Spanish Constitutional Tribunal has held that the only requirement for a court in Spain to exercise jurisdiction over a case is that there exist: “*reasonable indications that the crimes charged have not been effectively prosecuted*”.<sup>iii</sup> Concurrent jurisdiction is wholly appropriate in cases of judicial inactivity, or fraudulent and ineffective investigations. It is a tool which allows State parties to combat fraudulent investigations and end impunity for crimes such as torture. Considering that the investigations in Mexico have been ineffective in identifying or prosecuting those involved, Spain is in violation of Article 5 in failing to prosecute the perpetrators of torture under universal jurisdiction.

### **In conclusion,**

The refusal thus far of the courts in Spain to admit the case has left Ms. Cristina Valls without an effective judicial remedy due to Spain’s failure to investigate and prosecute as mandated by the Torture Convention. The principle of universal jurisdiction has evolved in international law in order to end impunity and to ensure accountability for international crimes such as torture, regardless of where and by whom they are perpetrated. Article 5, together with Article 7 of the Convention against Torture clearly provide for universal jurisdiction and further demonstrate the commitment of the international community to end impunity for the crime of torture. The Committee against Torture has previously found that the exercise of universal jurisdiction is wholly appropriate in holding perpetrators to account for the crime of torture in finding that Senegal was in violation of Article 5 and Article 7, for failing to prosecute in Senegal or extradite to Belgium.<sup>iv</sup> In this case, considering the fraudulent investigation and lack of prosecution, Spain is in violation of Article 5 for failing to investigate the case.

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<sup>iii</sup> Sentencia del Tribunal Constitucional 237/2005, 26 de Septiembre de 2005.

<sup>iv</sup> Decisions of the Committee Against Torture under Article 22. Thirty sixth Session. Communication No. 181/2001 Senegal 19/05/2006 CAT/C/36/d/181/2001.