

Spanish Lawmakers Should Reject Proposal Aimed at Closing the Door on Justice for the Most Serious Crimes

Proposed Bill Limits Spanish Jurisdiction over International Crimes and Would Breach Key International Treaties

Madrid, February 10, 2014 – Lawmakers from Spain’s Popular Party are fast-tracking a bill that would limit Spanish courts’ ability to investigate and prosecute serious crimes under international law. The new proposal to reform the country’s universal jurisdiction laws would put Spain in breach of its international obligations and offer the prospect of impunity to many responsible for serious crimes.

The Popular Party seeks to justify the proposed changes by alleging that the country’s current universal jurisdiction laws are being overused or misused. If enacted, however, the proposed bill would close the doors of Spanish courts to the victims of grave human rights violations who are unlikely otherwise to be able to obtain justice, particularly within their own jurisdictions.

The principle of universal jurisdiction allows national courts to try cases of the most serious crimes regardless of where they were committed and the nationality of the perpetrator and/or the victim. These crimes include genocide, crimes against humanity, war crimes, torture and enforced disappearance. The consensus of the international community is very clear: **these crimes shock the conscience of humanity and must be punished, and it is the duty of all states to investigate and prosecute those responsible for these crimes.**

The proposed bill introduces an extensive and complex set of requirements that must be met before Spanish courts can assert jurisdiction over these crimes.

In particular the bill provides that, for cases involving allegations of genocide, crimes against humanity and war crimes to be investigated and prosecuted in Spain, the suspect must either be a Spanish national or a foreigner habitually resident in Spain or a foreigner who is in Spain, whose extradition has been denied by Spanish authorities. For torture and enforced disappearance, the proposed bill requires that the suspect be a Spanish national or, alternatively, that the victim be a Spanish national at the time when the crime was committed *and* that the suspect is present in Spain. Where these conditions are not met, the proposal allows Spanish courts to prosecute those crimes that are required by international treaties where the suspect is a foreigner on Spanish soil so long as Spain has received and denied an extradition request.

If enacted, the bill would place Spain in breach of its international law obligations and would be a devastating blow to Spain’s commitment to ensuring accountability for the worst crimes

International Legal Background

The international community has determined that certain crimes, including war crimes, torture, enforced disappearance, are so egregious that all states have a duty either to investigate and prosecute or to extradite any person found on their soil who is suspected of

these crimes. At least six key international treaties enshrine the principle of “prosecute or extradite” (*aut dedere aut judicare*).

For example, the Geneva Conventions state that “Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches [i.e. war crimes], and shall bring such persons, regardless of their nationality, before its own courts.” The Rome Statute also emphasizes the important role that states should play in ensuring accountability, providing that the International Criminal Court “shall be complementary to national criminal jurisdictions” and that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” Neither of these treaties, nor any of the other international treaties which concern the obligation to “prosecute or extradite,” supports limiting prosecutions for serious international crimes to alleged perpetrators of particular nationalities or to cases in which an extradition request has been lodged and denied.¹ The proposed bill does just this: it places restrictions on when prosecutions of certain crimes can take place.

In examining this obligation with respect to the Convention against Torture, the International Court of Justice explained in the 2012 case of *Belgium v. Senegal*, “prosecution is an international obligation under the Convention, the violation of which is a wrongful act engaging the responsibility of the State.”² The court further held that the state is required “to submit the case to its competent authorities for the purpose of prosecution, irrespective of the existence of a prior request for the extradition of the suspect.”³ This means that once Spain becomes aware that a person suspected of these crimes is present on its territory, it must take steps to prosecute—unless it chooses to extradite the suspect to another state or surrender that person to an international criminal court.

The draft bill applies not only to future investigations but also to current investigations, meaning that all current cases on the basis of universal jurisdiction will be closed until it can be proven that they comply with the new requirements. This is at odds with Spain’s duty to carry out effective investigations and prosecutions for these crimes. Furthermore, it may go beyond the legislative authority of Parliament by summarily closing all the investigations. It could also interfere with the independence of the judicial system. Any decision to close a case should be taken by the courts on a case-by-case basis.

The legal restrictions contained in the bill put Spain at risk. First, they violate their international law obligations and flout the International Court of Justice decision on the duty to “prosecute or extradite.” Consequently, the bill would expose Spain to being brought before the International Court of Justice, the U.N. Committee against Torture, and the U.N. Committee on Enforced Disappearances. Second—and at a more basic level—the bill would damage Spain’s international reputation and make it an outlier in European Union Member States’ common fight against impunity for international crimes.

¹ These treaties include the Geneva Conventions of 1949, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the Convention for the Suppression of Unlawful Seizure of Aircraft, and the Convention on the Physical Protection of Nuclear Materials.

² Questions Concerning the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), Judgment (July 20, 2012), paras. 94 and 95.

³ *Ibid.*, para. 94.

When Spain ratified international treaties, it affirmed its legal commitment to be bound to deny safe haven to perpetrators of the world's most serious crimes and to fulfill its obligation to investigate and prosecute suspects of these crimes. We urge Spain to uphold these commitments and ensure that any reforms to its universal jurisdiction laws are consistent with international law.

The signatory organizations will continue to support the cause of justice for all victims of crimes under international law. Spain must respect the legality of its international obligations and be sensitive to the needs of victims. In the world's struggle to end mass atrocities, Spain was once at the vanguard. We must not let it fall behind.

FIDH, International Federation for Human Rights

CCR, Center for Constitutional Rights

AI, Amnesty International

RIS, Rights International Spain

HRW, Human Rights Watch

CCIJ, Canadian Centre for International Justice

Redress

CJA, Center for Justice & Accountability

APDHE, Asociación Pro Derechos Humanos de España

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ECCHR, European Center for Constitutional and Human Rights

IDHC, Institut de Drets Humans de Catalunya

FIBGAR, Fundación Internacional Baltasar Garzón

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