

Ms Beatrice Ask  
Minister of Justice  
Presidency of the Council of the European Union

Brussels, 15 September 2009  
Ref: B900

Dear Beatrice Ask,

**Subject: Amnesty International briefing: "Spain: out of the shadows - time to end incommunicado detention"**

Amnesty International wishes to draw your attention to a briefing it is launching today on the incommunicado detention regime in Spain, entitled "Spain: out of the shadows - time to end incommunicado detention".

The briefing prepared by Amnesty International highlights how people held in incommunicado detention under Spanish legislation may be deprived of effective access to a lawyer as well as access to a doctor of their own choice, and are unable to inform their family and friends of their detention.

Amnesty International considers that the incommunicado regime in Spanish law is a violation of Spain's obligations under international human rights law both in theory and practice. It is one of the most severe detention regimes in any European Union (EU) country.

The incommunicado detention legislation has been maintained and even amplified by successive Spanish governments despite the calls for over a decade by various United Nations (UN) bodies, the Council of Europe's Committee for the Prevention of Torture (CPT) and human rights organisations.

Amnesty International calls on the Spanish authorities to at last abrogate the existing legislation permitting incommunicado detention and to ensure the effective protection of the rights of all persons deprived of their liberty in accordance with international human rights standards.

Amnesty International also calls on the EU institutions to act:

- by adding their voice to the calls made by the UN and the Council of Europe, to publicly denounce the incommunicado detention regime and to press on the Spanish authorities to end the use of a detention regime that is in violation of EU member states' obligations under international and European human rights law;
- by ensuring that the EU rapidly adopts binding standards on procedural rights for criminal suspects and defendants that clearly outlaw such a detention regime in the EU Area of Freedom, Security and Justice.

In particular and in line with the roadmap on procedural safeguards presented by the Swedish Presidency, Amnesty International calls on the Commission and the Council to initiate as soon as possible discussions on EU standards regarding the right to access to a lawyer and to communication for suspects and defendants in criminal proceedings.

The future EU standards must ensure that:

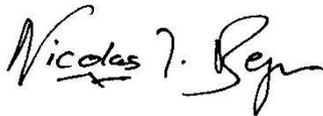
- all persons deprived of their liberty enjoy the right to consult with a lawyer of their own choice in private, and to have a lawyer present during questioning and the making of statements from the outset of the detention and throughout the period in custody
- all detainees are able to exercise their right to notify a relative or other person of their choice or have the person notified of the fact and place of their detention without delay.

In addition, Amnesty International calls on the Commission and the Council to include as part of the debate on new EU legislation and policies on procedural safeguards in criminal proceedings, the right to medical examination, including by a doctor of the individual's own choice if requested.

By condemning the incommunicado detention regime and taking proactive steps to ensure that international and European human rights standards are built in EU's legislation and policies in the area of criminal law, the EU will send a clear message that no derogation from EU member states' human rights obligations are permitted in the EU Area of Freedom, Security and Justice, and that EU action in this area aims at ensuring effective protection of the human rights of all across the EU. This is particularly important at a time when the EU is finalising the priorities of the future Stockholm programme.

We thank you for your attention and remain at your disposal for further information and discussions.

Yours sincerely,



Nicolas Berger  
*Director*  
*Amnesty International EU Office*



Lise Bergh  
*Director*  
*Amnesty International Sweden*

Enclosed: *Spain: out of the shadows – Time to end incommunicado detention*, Amnesty International 2009  
[EUR 41/001/2009]

Cc. Jacques Barrot, Vice-president of the European commission, Responsible of Justice, Freedom, Security