

OUT OF THE SHADOWS

END INCOMMUNICADO
DETENTION IN SPAIN

COUNTER TERROR
WITH JUSTICE

AMNESTY
INTERNATIONAL



SPANISH LAW ALLOWS PEOPLE TO BE HELD INCOMMUNICADO, WHICH MEANS THEY HAVE NO EFFECTIVE ACCESS TO A LAWYER OR TO A DOCTOR OF THEIR CHOICE, AND THEIR FAMILY IS NOT INFORMED WHERE THEY ARE OR THAT THEY HAVE BEEN DETAINED. IT IS ONE OF THE STRICTEST DETENTION REGIMES IN THE EUROPEAN UNION. MANY DETAINEES HELD INCOMMUNICADO SAY THAT THEY WERE TORTURED OR OTHERWISE ILL-TREATED. THEIR ALLEGATIONS ARE RARELY INVESTIGATED.

Under Spain's law of criminal procedure, a detainee can be held incommunicado for up to five days in all cases and for up to 13 days if suspected of terrorism-related offences. The 13-day period includes up to five days of incommunicado detention in police custody, which can be extended by the investigating judge for a further five days on remand in prison (provisional imprisonment). A further three days of incommunicado detention may be imposed on a remand prisoner by the judge at any time during the investigation.

Under the incommunicado regime, the rights of detainees are restricted in ways that breach international human rights standards, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

According to Spanish law, detainees held incommunicado:

- cannot appoint their own lawyer – legal assistance is provided by a duty lawyer appointed by the Bar Association, on request of the police;
- cannot consult any lawyer in private (neither in police custody nor on remand);
- cannot have their family informed that they have been detained or where they are held; foreign nationals cannot inform their embassy or consulate;
- can only be examined by a state-appointed doctor, not a doctor of their own choice.

In addition, people held on suspicion of involvement in terrorism-related offences or organized crime – whether or not they are held incommunicado – may be held in police custody for up to five days after arrest before being taken before a judge.

Incommunicado detention violates important rights of detainees that are essential to ensure a fair trial, including prompt and effective access to legal representation. The UN Commission on Human Rights and the Human Rights Committee have stated that prolonged incommunicado detention may in itself constitute a form of cruel, inhuman or degrading treatment. The UN Special Rapporteur on torture has called for a total ban on incommunicado detention.

The Spanish government claims that incommunicado detention is an essential counter-terrorism measure. However, the UN Security Council, the heads of state and government gathered at the UN World Summit in 2005, the UN General Assembly, the European Court of Human Rights and the Committee of Ministers of the Council of Europe, have all explicitly said that the measures states take to counter terrorism must comply fully with international human rights standards. Incommunicado detention does not comply with these standards.

The UN Committee against Torture has expressed concern that the incommunicado regime in Spain facilitates torture. The UN Human Rights Committee has repeatedly urged Spain to abolish incommunicado detention. The UN Special Rapporteur on torture recommended that Spain abolish the incommunicado regime, noting that “incommunicado detention creates conditions that facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture”. The UN Special Rapporteur on counter-terrorism has expressed concern at the continued use of incommunicado detention and called “for the complete eradication of the institution of incommunicado detention”.

The Spanish authorities must listen to these bodies and take urgent action to end the incommunicado regime.

MOHAMMED FAHSI



Mohammed Fahsi was arrested at his home near Barcelona by masked Civil Guard officers at approximately 2am on 10 January 2006. He was taken to Madrid and held incommunicado for four days. He was subsequently remanded in custody on suspicion of involvement in terrorism-related activities.

Mohammed Fahsi's wife, Khadjia Podd, was not at home when he was arrested. She found out from a friend that armed, masked police had taken him away during the night. At the local police station nobody could tell her where he was. 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.”

While held incommunicado, Mohammed Fahsi could not appoint himself a lawyer. Four days after his arrest, a duty roster lawyer summoned by the police came to represent him. He arrived at 3am on the morning Mohammed Fahsi was due to appear before the judge but he was not allowed to speak to his client. The lawyer told Mohammed Fahsi's wife that at the detention facility he was taken to a brightly lit "room within a room", behind the back of an old garage full of abandoned vehicles. He said he saw Mohammed Fahsi and several other men blindfolded, handcuffed and crouched on the floor, unable to stand up properly. He said they were dirty and dishevelled, and had no idea what time it was. He told her he had never seen anything like it.

Mohammed Fahsi says he was kept blindfolded at all times during his detention and insulted and threatened by Civil Guard officers. He said that while in his cell, he was forced to remain standing with his hands in the air and his back

to the door, or to do press-ups to the point of exhaustion. Every time he tried to sit down a Civil Guard officer would make him stand again and he was subjected to prolonged sleep deprivation techniques. Guards constantly shouted and kicked the cell door.

Mohammed Fahsi said that he was questioned by Civil Guard officers without a lawyer present. The officers threatened to kidnap his wife and children and send them to the desert in Morocco. At one point he said he lost consciousness and thinks he was drugged with an aerosol spray. He said he could hear other detainees shouting and being beaten.

Mohammed Fahsi had no access to his family doctor, but was examined by a state-appointed doctor. He says he told her he was being ill-treated but she did not believe him. She did, however, record in his medical notes that he was being deprived of sleep.

Other men arrested in the same operation – "Operación Chacál" – also reported being ill-treated and tortured while held incommunicado. Methods cited included forced exercise, stress positions, sleep deprivation, blindfolding, suspected administration of hallucinogenic drugs, humiliation of a sexual nature, violence and threats of violence, threats (including of sexual violence) against family members, racist and Islamophobic verbal abuse, insults and intimidation.

After four days in incommunicado detention, Mohammed Fahsi was brought before the investigating judge and remanded into pre-trial detention. His complaints of torture, made before the investigating judge and prosecutor, were never investigated.

TAKE ACTION NOW

WRITE TO THE MINISTER OF JUSTICE CALLING ON HIM TO:

- Abrogate legislation that allows incommunicado detention, specifically Articles 509, 520bis and 527 of the law of criminal procedure.
- Allow all detainees to consult a lawyer of their choice in private, and to have a lawyer present during questioning and the making of statements, throughout the detention period.
- Allow all detainees to be examined by a doctor of their choice if so requested.
- Allow all detainees to notify their family of their detention and location without delay, either personally or via a third party.
- Make compulsory in all cases the video and audio recording of all custody areas of police stations and any other places where detainees may be present, except where this would violate their right to consult a lawyer or doctor in private. These recordings must be kept in a secure facility for a reasonable period to ensure investigators can view them if so required.
- Investigate the allegations of torture made by Mohammed Fahsi and others arrested in "Operación Chacál".

Write to:

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Main inside and front cover images are taken from a reconstruction of events as described by Mohammed Fahsi.

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Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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