

Open Letter to Mr. José Antonio Griñán, Chairman of the Spanish Socialist Workers' Party (PSOE)

International
Council of Advisors

Brussels, 14 May 2014

Dear Mr. Griñán,

The International Campaign for Tibet (ICT) welcomed the public statement made by the spokesperson of the Spanish Socialist Workers' Party (PSOE), Ms. Soraya Rodríguez, on March 4, announcing that it would appeal to the Constitutional Court against a bill limiting the power of the judiciary to investigate and prosecute serious crimes under international law. This legislative move by the Spanish government has damaged Spain's international credibility in Europe as it contravenes both the Spanish Constitution and international law.¹

We note however that so far your Party has not taken action, and we are concerned that the time window for such an appeal to the Constitutional Court is limited.

The International Campaign for Tibet, together with many Spanish citizens, lawyers, and expert NGOs, is deeply concerned about the negative consequences of this law reform and the precedent set by Spain. One hundred and twenty-two non-governmental organisations signed a statement calling on the Spanish Parliament to uphold its international legal commitments and ensure that any reforms to its universal jurisdiction laws are consistent with international law.²

Both the Spanish Congress and Senate voted in favour of the reform of Article 23.4 of the *Ley Orgánica del Poder Judicial* (Organic Law of the Judicial Branch), which forms the basis of universal jurisdiction in Spain.

The principle of universal jurisdiction allows national courts to try cases of the most serious crimes, including war crimes, torture, enforced disappearance, regardless of where they were committed and the nationality of the perpetrator and/or the victim. The current reform in Spain would restrict the cases capable of being tried in the Spanish courts to those involving defendants who are Spanish nationals and/or habitually resident in Spain. The consequence will be that international crimes will go unpunished and impunity will prevail. Already there are at least two cases in which the negative effects of the new law have been evident, with the release of suspected drug traffickers from Egypt³ and another

¹ICT statement Spanish Socialists commit to defence of universal justice after controversial ruling due to pressure from China: <http://www.savetibet.org/spanish-socialists-commit-to-defense-of-universal-justice-after-controversial-ruling-due-to-pressure-from-china/>; El País article, March 4, 2014:

http://elpais.com/elpais/2014/03/04/planeta_futuro/1393953605_579873.html

² For more legal details see the joint NGO statement available at:

http://www.tibetpolicy.eu/wp-content/uploads/ONG_declaracion_conjunta_reformaJU_Espana-EN-24-02-2014.pdf

³ El País article, April 8, 2014:

http://elpais.com/elpais/2014/04/08/inenglish/1396957574_158251.html

Mr. Harrison Ford
The Honorable Vaclav Havel*
(October 1936 - December 2011)
The Honorable Hideaki Kase
Ms. Kerry Kennedy
The Honorable Vytautas Landsbergis
Dr. Fang Lizhi*
(February 1936 - April 2012)
Mrs. Mairead Maguire
The Honorable Adolfo Perez Esquivel
Dr. Jose Ramos-Horta
The Honorable Rabi Ray
Professor Samdhong Rinpoche
Ajan Sulak Sivaraska
Tenzin N. Tethong
Archbishop Desmond Tutu
Dr. Elie Wiesel

International
Campaign for Tibet - Brussels

Vincent Metten,
EU Policy Director

15 rue de la Linière,
1060 Brussels, Belgium
Tel.: +32 (0) 2 6094410
Fax: +32 (0) 2 6094432
E-mail: info@savetibet.eu

International
Campaign for Tibet Europe

Tsering Jampa,
Executive Director

Vijzelstraat 77, 1017 HG
Amsterdam, The Netherlands
Tel.: +31 (0) 20 3308265
Fax: +31 (0) 20 3308266
E-mail: icteurope@savetibet.nl
www.savetibet.nl
IBAN: NL09 INGB 0000 0042 23
K.v.k. 34119094

International
Campaign for Tibet
Deutschland e.V.

Kai Müller,
Executive Director

Schönhauser Allee 163,
10435 Berlin, Germany
E-mail: info@savetibet.de

International
Campaign for Tibet

Matteo Mecacci,
President

1825 Jefferson Place, NW,
Washington, D.C. 20036 USA
E-mail: info@savetibet.org

www.tibetpolicy.eu
www.savetibet.fr

concerning an extradition request from Argentina on the grounds of torture⁴, which were not possible to prosecute due to the reform of the law.

As the NGOs point out, the changes to the law violate several key international treaties ratified by Spain, such as the Geneva Conventions of 1949⁵ or the Rome Statute of the International Criminal Court⁶, which all enshrine the principle of “*prosecute or extradite*”.

We believe too there is widespread concern about comments by Spanish Foreign Affairs Minister, Mr. José Manuel García Magallo, who on April 13 defined universal jurisdiction, in relation to the recent Tibet case in Spain, as a “*pointless*” exercise, which would not put an end to international impunity but rather create international conflicts for Spain.⁷ This way the Minister is recanting the principled importance of an internationally recognized doctrine.

A further issue of concern regards the retroactive nature of the new law, as it would apply not only to future investigations but also to current ones, meaning that all current cases on the basis of universal jurisdiction will be terminated if they do not comply with the new requirements. This goes against the principle of separation of powers in a democracy, as it goes beyond the legislative authority of Parliament by summarily closing all the investigations. Any decision to close a case should be taken by the courts on a case-by-case basis

As your spokesperson stated, the only possibility of reversing this damaging trend is for the Socialist Party to launch an appeal to the Spanish Constitutional Court to declare its illegality, which needs to be signed by at least 50 members of the Spanish Parliament.

As the law was published in the Spanish Official Journal (*Boletín Oficial del Estado*) on March 14, ICT urges you to ensure that the PSOE honours its promise and lives up to its commitment to international justice by taking this action immediately and submit the appeal to the Constitutional Court before June 14.

Yours sincerely,



Vincent Metten
EU Policy Director

Cc:

- Ms. Soraya Rodríguez, Spokesperson of the PSOE
- Ms. Elena Valenciano, Vice Secretary General of the PSOE
- Mr. Juan Fernando López Aguilar, Member of the European Parliament, Group of the Socialists and Democrats, Chair of the Committee on Civil Liberties, Justice and Home Affairs

⁴ El Mundo article, May 5, 2014:

http://www.elmundo.es/opinion/2014/05/04/53668671e2704e77068b4571.html?cid=SMBOSO25301&s_kw=twitter

⁵ Article 50: “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, and shall bring such persons, regardless of their nationality before its own courts.”

⁶ Preamble: “It is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.”

⁷ Interview with Spanish Foreign Affairs Minister, Mr. José Manuel García Magallo on *El Debate de la 1*, available on <http://www.rtve.es/alacarta/videos/el-debate-de-la-1/>