

### **ANNEX 3 - Formal Criminal Charges filed with the Spanish Minister of Justice (Don Rafael Catalá Polo), October 6, 2014 (Proof of Silencio Administrativo)**

**RESPONDENT STATE PARTY:** The Kingdom of Spain **NATURE OF DOCUMENT:** Formal Criminal Charges, Notification of Transnational State Capture, and Proof of Institutional Silence (*Silencio Administrativo*) **SUBMISSION FOR:** UNCAT Individual Communication

#### **1. Factual Background and Purpose of the Communication**

On October 6, 2014, the complainant, Ing. Hans Smedema, submitted a formal, detailed communication to Don Rafael Catalá Polo, the Spanish Minister of Justice (*Ministro de Justicia*) in Madrid 1, 2.

Unlike the prior 2013 communication (Annex 2) which was addressed to the Ministry of Finance, this document explicitly served as the **filing of formal criminal charges for three related cases** occurring within Spanish sovereign territory 2, 3:

- **Case 1:** The scam and theft of €75,000, along with the theft of crucial evidentiary documents, in Xalo/Jalon, Alicante 2, 3.
- **Case 2:** The scam and theft of €300,000, along with the theft of crucial evidentiary documents, in Benidorm 2, 3.
- **Case 3:** Severe human rights violations, specifically "brainwashing" and "secretly forced criminal electroshock torture" committed by Dutch secret service operatives (including Prof. Dr. Onno van der Hart and Jaap Duijs) in Benidorm to cover up past crimes 2, 3.

Crucially, the complainant explicitly informed the Spanish Minister of Justice that during the May 2010 torture incident in Benidorm, civilian witnesses had alerted the *Policía Local*, but the **local Spanish police were explicitly "not allowed to intervene as the perpetrators were protected by a higher Spanish level"** 1, 2. The complainant formally requested that Spanish officials investigate and prosecute these cases, provide written information on the progress of the prosecution, and formally contact the Dutch Minister of Justice (Ivo Opstelten) and the Dutch King to demand an end to the persecution 4, 5. The complainant emphasized that he was "secretly and Kafkaesque placed outside of the normal Dutch laws" and that "only Spain can prosecute the criminals" behind these operations 5, 6.

#### **2. The State's Response: Proof of *Silencio Administrativo***

Despite receiving a formal complaint detailing state-sponsored torture on its own soil, the active suppression of local law enforcement by higher authorities in Madrid, and the theft of €375,000, the Spanish government responded with absolute institutional silence 2, 5.

The complainant "**never received any answer to those letters**" 7, 8. No formal acknowledgment was issued, no preliminary inquiry or police investigation was initiated, and no reasoned administrative rejection was ever provided to the victim 9. Under Spanish administrative law, this absolute failure of the public administration to respond to a formal citizen petition constitutes negative administrative silence (*silencio administrativo*) 10, 11. Annex 3 stands as objective documentary proof that the Kingdom of Spain was explicitly put on notice regarding violent crimes and transnational intelligence operations occurring on its territory, yet willfully chose to ignore the victim's formal criminal charges 5, 9.

#### **3. Legal Significance for UNCAT Proceedings against Spain**

Annex 3 is a foundational piece of evidence in the UNCAT communication against the Kingdom of Spain, proving multiple severe treaty violations and satisfying strict admissibility requirements:

**A. Direct Violation of UNCAT Article 12 (Failure to Investigate)** Article 12 of the Convention Against Torture imposes a non-derogable obligation on a State Party to proceed to a "prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction" 9, 12. Smedema's October 6, 2014, formal complaint to the Minister of Justice contained explicit, detailed allegations of "brainwashing," drugging, and "secretly forced criminal electroshock torture" occurring in specific Spanish municipalities, alongside claims that local police were

ordered to stand down 9, 12. These detailed claims unequivocally met the "reasonable grounds to believe" threshold required to trigger Spain's mandatory investigative duties 9, 11. **Spain's absolute inaction upon receiving Annex 3 constitutes a direct breach of this non-derogable international duty 9, 11.**

**B. Direct Violation of UNCAT Article 13 (Denial of the Right to Complain)** Article 13 guarantees that any individual who alleges they have been subjected to torture has the absolute right to complain to, and to have their case "promptly and impartially examined by," competent authorities 8, 13. By responding with "negative administrative silence" at the ministerial level to the formal criminal charges filed in Annex 3, the Spanish state structurally stripped the complainant of this fundamental right 8, 11. This total lack of response effectively shut down any avenue for domestic remedy, denying the victim his right to have the complaint examined 8, 13.

**C. Active Complicity and Violation of Articles 2 and 16** By allegedly ordering local police to retreat during an active incapacitation event in Benidorm, as formally reported in Annex 3, Spanish authorities demonstrated active complicity rather than mere negligence 11, 14. The failure to prevent these acts of cruel, inhuman, and degrading treatment, coupled with the blind acceptance of foreign intelligence directives, points to a severe breach of Articles 2 and 16 of the Convention 11, 15.

**D. Establishing the "Futility Exception" for Exhaustion of Domestic Remedies (Article 22(5)(b))** To submit an individual communication to UNCAT, a complainant must generally exhaust domestic remedies. Annex 3 proves that attempting to find a domestic remedy in Spain is structurally futile 16, 17. The absolute institutional silence from the Minister of Justice, combined with the fact that Spanish local law enforcement was ordered to "stand down," demonstrates that the state actively obstructed the most fundamental domestic remedy: police intervention and initial fact-finding 18, 19. Furthermore, any attempt to escalate this through Spanish contentious-administrative courts is blocked by the 1968 Official Secrets Act (*Ley de Secretos Oficiales*), which legally embargoes all necessary evidence (such as intelligence coordination and police dispatch logs) required to substantiate a judicial claim 20, 21. This triggers the UNCAT Article 22(5)(b) futility exception, proving that judicial remedies in Spain are theoretically existent but practically unavailable and structurally incapable of bringing relief 21, 22.

**Conclusion** Annex 3 serves as forensic proof of transnational state capture and Spain's complicity by omission. It demonstrates that the Spanish Minister of Justice was formally and explicitly notified of severe human rights violations, financial crimes, and active police obstruction occurring on Spanish sovereign soil 2, 12. By choosing absolute *silencio administrativo* over its mandatory treaty obligations, the Kingdom of Spain abandoned its duty to protect a resident alien, rendering domestic remedies exhausted by futility and justifying urgent supranational intervention 23, 24.