

## **ANNEX 8 - Legal Analysis of the 1968 Official Secrets Act (Ley de Secretos Oficiales) demonstrating the structural futility of Spanish judicial remedies**

**RESPONDENT STATE PARTY:** The Kingdom of Spain **NATURE OF DOCUMENT:** Legal Analysis, Proof of Structural Futility, and Documentation of a "Jurisdictional Black Hole" **SUBMISSION FOR:** UNCAT Individual Communication

### **1. Factual Background and the Nature of the 1968 Act**

Annex 8 provides a rigorous legal analysis of the 1968 Official Secrets Act (*Ley de Secretos Oficiales*), a pre-constitutional law enacted during the Franco dictatorship that continues to govern classified information in the Kingdom of Spain 1, 2.

The primary and most devastating feature of this legislation is its glaring authoritarian defect: **it establishes no maximum time limit for the declassification of secret documents** 1-3. Unlike surrounding European democracies that mandate automatic declassification timelines, the Spanish law allows the government to classify information indefinitely, meaning state secrets remain locked away in perpetuity at the absolute and arbitrary discretion of the executive branch 1-3. Despite 2024–2026 attempts by the Spanish government to reform this system via the proposed Classified Information Act (*Ley de Información Clasificada*), partisan gridlock has paralyzed the reform, leaving the draconian 1968 Act in full force 4, 5.

### **2. The Mechanism of Obstruction: Shielding Transnational Collusion**

In the context of the Hans Smedema Affair, the 1968 Official Secrets Act acts as an "impenetrable shield" that actively protects state-sponsored crimes from public accountability and judicial scrutiny 1, 2, 6.

The allegations involve a high-level transnational conspiracy where Dutch intelligence operatives (including Jaap Duijs and Prof. Dr. Onno van der Hart) executed extraterritorial operations on Spanish soil 7-9. Annex 8 demonstrates that any evidence of Spanish state complicity or awareness—such as Spanish National Intelligence Centre (CNI) logs detailing coordination with Dutch agents, Ministry of Interior communications, or the suppressed dispatch reports detailing why the *Policía Local* were explicitly ordered to "stand down" during the 2010 Benidorm torture incident—is entirely shielded by perpetual classification under this Act 6, 10-12.

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

Annex 8 is a highly technical, foundational document for the UNCAT complaint against the Kingdom of Spain. It serves to legally neutralize the anticipated defense from the Spanish State Attorney's Office that the complainant failed to exhaust domestic appellate courts. Its legal significance is outlined below:

**A. Absolute Proof of the "Futility Exception" (UNCAT Article 22(5)(b))** Under UNCAT Article 22(5)(b), a complainant must exhaust all available domestic remedies unless those remedies are "unlikely to bring effective relief" 13. To exhaust remedies in Spain, a victim must theoretically navigate the Contentious-Administrative Courts and ultimately file for constitutional protection (*recurso de amparo*) before the Spanish Constitutional Court 6, 14.

Annex 8 legally proves that **escalating this claim through the Spanish judicial hierarchy is mathematically guaranteed to fail** 6, 11. Because the executive branch legally embargoes all necessary proof (police orders, intelligence coordination) under the guise of national security, it creates a "jurisdictional black hole" 6, 10, 15. A Spanish judge cannot adjudicate a claim of a human rights violation if they are legally barred from accessing the evidence required to substantiate the claim 10, 12. Therefore, judicial remedies in Spain are theoretically existent on paper, but practically unavailable and structurally incapable of bringing relief, perfectly satisfying the UNCAT futility exception 6, 16, 17.

**B. Facilitation of Transnational Impunity and Violation of Article 13** Article 13 guarantees a victim's right to an effective complaint and examination 18. The 1968 Official Secrets Act stifles this right by allowing the Spanish state to legally avert its gaze while foreign state predators operate with absolute impunity 15, 19. By legally withholding the evidence necessary to prove the transnational "cordon sanitaire" and local police

obstruction, Spain effectively ensures that victims of allied foreign intelligence operations are left entirely defenseless within its borders 15, 20, 21.

**Conclusion**Annex 8 demonstrates that the Kingdom of Spain's judicial architecture contains a fatal, pre-constitutional flaw that structurally precludes accountability for state-sponsored human rights violations. By utilizing the 1968 Official Secrets Act to permanently embargo the evidence of extraterritorial torture and local police complicity, the Spanish state has manufactured a "jurisdictional black hole" 10, 12, 15. This document serves as undeniable legal proof that pursuing domestic judicial remedies in Spain is entirely futile, rendering the individual communication to the UN Committee Against Torture immediately admissible 6, 16.