

SPAIN

A Briefing for the UN Committee against Torture: Update

A. Amnesty International's submission

In October 2002 Amnesty International submitted a 17-page briefing to the UN Committee against Torture (the Committee). The Committee examined Spain's fourth periodic report on its implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment between 11-13 November 2002.

The briefing to the Committee is attached with this document. From this it will be seen that Amnesty International focused its attention on:

- the definition of torture in the Spanish Penal Code
- torture during incommunicado detention
- racism in law and practice
- race-related torture and ill-treatment by law enforcement officers
- rape as torture
- impunity
- compensation levels in cases of torture

Amnesty International listed 15 recommendations to the Spanish government in its briefing, some of which reiterated the recommendations made to the Spanish authorities in its report, published in April 2002, *"Crisis of identity: Race-related Torture and Ill-Treatment by State Agents"* (EUR 41/001/2002). Based on its research and documentation of race-related torture and ill-treatment, which showed that allegations of such torture were frequent, the organization stated that it had been seeking from the Government a revision to the Spanish Penal Code, to include, among the motives for considering a crime as torture, "discrimination of any kind", in line with the definition of torture set out by the Convention against Torture.

Amnesty International informed the Committee that, although a number of articles of the Spanish Penal Code criminalize racial discrimination or racial hatred, difficulties arose in the gap between the law and its practical application. The organization expressed concern about a Constitutional Court judgment, dated January 2001, which ruled that skin colour or other foreign appearance could be used as a criterion for deciding when police officers could carry out identity checks. In the view of this organization, racial profiling is common in Spain and the discriminatory use of identity checks has led to a situation in which many persons of foreign origin have been abused and physically ill-treated by public officials.

Amnesty International highlighted a number of individual cases to illustrate its concerns about race-related torture and ill-treatment, including those of a Brazilian national, Rita Margarete Rogerio, and a Peruvian national, Miriam Rosa Verástegui Templo, who were respectively raped and sexually assaulted while in police custody. (Both the rape and the sexual assault were recognized by the courts as having occurred). The organization also highlighted its concerns about the ill-treatment and expulsion of unaccompanied foreign

children from Spain to Morocco and described the various initiatives it had taken within the last two years to bring this question to the attention of the Spanish authorities.¹

In its briefing Amnesty International outlined the reasons for its opposition to incommunicado detention, believing it to be beyond question that a (maximum) five-day period during which detainees could not see a lawyer or doctor in whom they had confidence, and could not notify family or friends of their situation or whereabouts, made it far more likely that - in the absence of such visits to provide scrutiny of detainees' health and situation - torture and ill-treatment could occur.

Amnesty International called for the abrogation of Articles 520 bis and 527 of the Code of Criminal Procedure which govern the incommunicado regime. It called for the right of access to a lawyer from the outset of detention and the right to talk to the lawyer in private, as well as the right to be examined not only by an officially-appointed forensic doctor but also by a doctor of the detainee's own choice. It also called for an end to the hooding and/or blindfolding of detainees - a practice alleged in a number of allegations - and for the video recording of all interrogation sessions. The organization urged that evidence from non-recorded interrogations should be excluded from court proceedings.

Amnesty International, in addition, drew the Committee's attention to the issue of impunity, which it believes is still a major problem in Spain. While welcoming the introduction of articles in the Penal Code which specifically prohibit torture and ill-treatment, and while recognizing that some public officials have indeed been convicted by the courts for acts of torture and ill-treatment, the organization pointed out a number of areas which continue to contribute towards impunity. These include the length of judicial proceedings in many cases, with delays of up to 15 or even 20 years being known in some instances, and the associated problem of prescription, or the lapsing of the time frame during which a crime could be tried; and the pardoning of officers convicted of torture and ill-treatment. Amnesty

¹During examination of Spain's report, the Committee members raised a number of individual cases with the Spanish government, including those of Rita Margarete Rogerio, Miriam Rosa Verástegui and the case of the three Local Police officers from Ceuta (all highlighted in Amnesty International's briefing as well as in the above-mentioned "*Crisis of identity*" report and previous documents). The organization noted that the Spanish government delegation admitted to the Committee that Rita Rogerio had indeed been raped in police custody, and that the Government was the first to regret this, as well as the fact that the perpetrator had not been found. This reply contrasts with that given earlier to Amnesty International by the Minister of the Interior. On that occasion the Minister laid emphasis on the acquittal of the police officers by the courts and the fact that an exhaustive internal police inquiry had found that no sexual assault took place.

International also described the way in which ethnic minorities or foreign nationals might specifically be affected by problems of impunity and referred to the length of time - often more than seven years - that victims of torture may wait before receiving a compensation award.

B. The Concluding observations

The Committee's Concluding observations are attached to this update (they are only available in Spanish for the time being, but should be available in English at a later date). The Committee noted, in its introduction, that while Spain's report contained much information about developments in Spanish law that were relevant to human rights, it contained little information about the practical application of the law since the last (third) periodic report was examined in November 1997.

The Committee went on to welcome, among other positive aspects of the report, the ratification (in October 2000) of the Statute of the International Court; training programs for the security forces and the reduction in the number of people held in provisional detention. The Committee also stressed that, while it was aware of the difficulties for a government facing "grave and frequent acts of criminal violence and terrorism", the measures taken by the Spanish government must be in compliance with the provisions of the Convention against Torture.

The Committee raised many reasons for concern. Noting the disparity between the Spanish government's assertion that there were only very isolated cases of torture and ill-treatment in Spain and the information received by a number of non-governmental organizations, including Amnesty International, according to which cases of torture and ill-treatment persisted, the Committee expressed particular concern about reports of race-related ill-treatment of immigrants - including reports of rape and sexual abuse.

Observing that Spain had become an important gateway into Europe for immigrants, with a related significant increase in the immigrant population, the Committee believed that the omission from Article 174 of the Spanish Penal Code - the article setting out the purposes by which torture is defined - of any reference to "discrimination" assumed a special significance.

The Committee expressed its "deep concern" about the continued application, for up to a maximum of five days, of incommunicado detention for certain very serious categories of crime (eg. membership of an armed band or acts committed by such bands). The Committee observed that, despite Government reassurances that incommunicado detention did not involve total isolation - in the sense that the detainee had access to an officially-appointed lawyer and forensic doctor and legal safeguards were built into the law - such detention facilitated the carrying out of acts of torture and ill-treatment.

The Committee also expressed concern about:

- the length of judicial investigations into torture complaints, which could give rise to the granting of pardons to convicted torturers, or the failure to impose appropriate

sentences, owing to the period of time that had elapsed since the crime was committed;

- failure of the authorities, in some cases, to open disciplinary procedures while judicial investigations were under way;
- cases of ill-treatment during expulsion procedures, in particular those involving non-accompanied foreign minors;
- the harsh detention conditions experienced by “first category” (top security) prisoners, obliged to remain in their cells for up to 22 hours per day and unable to take part in communal activities.²

The Committee made five substantive recommendations to the Spanish government:

- Improvement of the definition of torture contained in Article 174 of the Penal Code in order to bring this completely into line with the definition set out in the Convention and in order, also, to continue providing safeguards against racist or xenophobic acts;
- Introduction of measures to improve the conditions of those held *incommunicado*, such as: a) bringing video recording of police (or Civil Guard) interrogations into general practice, in order both to protect the detainee from torture or ill-treatment and to protect the officers from false accusations of torture. The video recordings must be made available to the competent judge; b) joint examination of detainees by an (officially appointed) forensic doctor and a doctor with the trust of the detainee;
- Prompt and impartial investigations (into acts of torture and ill-treatment). The alleged perpetrators of human rights violations must be brought to justice, particularly where complaints of torture are concerned;
- Disciplinary proceedings in cases of torture or ill-treatment must be opened, without prejudice to any suspension pending the outcome of the judicial proceedings;

²The prisoners of particular concern to the Committee were those “first category” prisoners included within a database known as the *Fichero de Internos de Especial Seguimiento* (FIES). The FIES has five different categories. According to reports, the FIES is not a mere administrative database, as the Government claims, but certain prisoners contained within it are subjected to a special regime, based on isolation and contrary to international standards. It should be added that prisoners included within other FIES categories have also complained about harsh prison conditions or acts of cruel, inhuman or degrading treatment. (See also *Amnesty International Report 1999*).

- Adoption of the necessary measures to ensure that expulsion procedures are in conformity with the Convention, in particular with regard to procedures against minors.

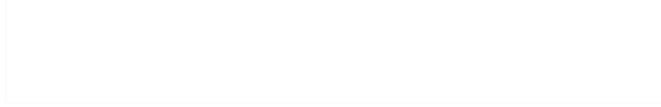
Amnesty International's response

On 20 October 2002 Amnesty International issued a public statement (AI Index: EUR 41/013/2002) calling on the Spanish government to take immediate action to implement the recommendations of the Committee. The organization reiterated that: "... the government's assertion to the Committee against Torture that cases of torture or ill-treatment are 'very isolated' in Spain is far from true".

Amnesty International urged the Spanish authorities to introduce strict rules for the registration, transfer and custody of detainees by public officials, to protect detainees from the criminal intent of some police officers or Civil Guards. The organization also took the opportunity to welcome recent reports that expulsions and ill-treatment of unaccompanied foreign children had diminished in recent months, but stated: "We will continue to investigate allegations of ill-treatment, including sexual harassment, in some reception centres for children".

COMITE CONTRA LA TORTURA

29^o período de sesiones 11 al 22 de noviembre de 2002



VERSION NO EDITADA

España

Proyecto de conclusiones y recomendaciones

1. El Comité examinó el cuarto informe periódico de España (CAT/C/55/Add.5) en sus sesiones 530, 533, y 540 celebradas los días 12, 13 y 19 de noviembre de 2002 (CAT/C/SR/ 530, 533 y 540) y aprobó las conclusiones y recomendaciones que figuran a continuación:

Introducción

2. El Comité acoge con beneplácito el cuarto informe periódico de España, que se ha presentado dentro de los plazos previstos. Si bien el informe contiene abundante información sobre desarrollos legislativos, el Comité observa que proporciona poca información acerca de la aplicación práctica de la Convención en el período transcurrido desde la presentación del informe precedente.

3. El Comité aprecia el envío por parte de España de una numerosa delegación, altamente calificada, para el examen del informe, lo que pone de manifiesto el interés del Estado Parte por continuar el diálogo abierto y constructivo que España viene manteniendo con el Comité. El Comité acoge con agrado la información adicional proporcionada por el Estado Parte a través de un informe complementario y sus exhaustivas respuestas orales a las preguntas de los miembros, oportunidad en que se proporcionó información complementaria y estadísticas.

Aspectos positivos

4. El Comité acoge con satisfacción que la Convención, en virtud del artículo 96 de la Constitución Española, forme parte del ordenamiento jurídico interno y pueda ser invocada directamente ante los tribunales.

5. El Comité reitera, tal como expresó en sus anteriores conclusiones y recomendaciones (A/55/44, par. 119-136) que el Código Penal Español, en vigor desde 1996, es en términos generales conforme al artículo 1 de la Convención. En este sentido, el Comité acoge con satisfacción que el Código Penal, en su artículo 57 modificado por Ley Orgánica 14/1999 de 9 de junio, establezca la posibilidad de que los jueces y tribunales puedan agregar a la pena principal en casos de tortura, prohibiciones accesorias, destinadas a la ulterior protección de la víctima.

6. El Comité también toma nota con satisfacción de lo siguiente:

- a) La ratificación, en octubre de 2000, del Estatuto de la Corte Penal Internacional.
- b) La adopción de distintas medidas destinadas a garantizar la protección de los derechos de los detenidos, tales como la elaboración del *Manual de Criterios para la Práctica de Diligencias por la Policía Judicial*, que establece los criterios de actuación

on de los funcionarios, especialmente en aquellos casos que conlleven limitaciones específicas de derechos y libertades, y su distribución a los miembros de las fuerzas y cuerpos de seguridad del Estado, así como a jueces y fiscales.

- c) Los esfuerzos desplegados en programas de capacitación para funcionarios de fuerzas y cuerpos de seguridad del Estado.
- d) La nueva Instrucción de la Delegación del Gobierno para la Extranjería y la Inmigración sobre el tratamiento de pólizos extranjeros, que sustituye a la de 17 de noviembre de 1998 sobre el mismo tema. En ella se establecen una serie de garantías relativas al derecho a la asistencia letrada de oficio en los procedimientos administrativos o judiciales que pueden llevar a la admisión de sus eventuales solicitudes de asilo, ola denegación de su entrada o expulsión del territorio español.
- e) El progreso en la habilitación del sistema penitenciario, mediante la construcción de 13 nuevos centros penitenciarios con capacidad para más de 14.000 reclusos.
- f) La disminución de presos reclusos en establecimientos penales a la espera de sentencia.
- g) La regularidad en las donaciones al Fondo de Contribuciones Voluntarias de las Naciones Unidas para las Víctimas de la Tortura.

Factores y dificultades que obstaculizan la aplicación de la Convención

7. El Comité es consciente de la difícil situación a la que hace frente el Estado Parte como consecuencia de los graves y frecuentes actos de violencia y terrorismo criminal, que atentan contra la seguridad del Estado y causan pérdida de vidas humanas y daños materiales. El Comité reconoce el derecho y el deber del Estado de proteger a sus ciudadanos de esos actos y de procurar la erradicación de la violencia, y observa que su legítima reacción debe ser compatible con lo dispuesto en el artículo 2.2 de la Convención, según el cual “en ningún caso podrán invocarse circunstancias excepcionales (...) como justificación de la tortura”.

Motivos de preocupación

8. El Comité observa con preocupación la dicotomía entre la afirmación del Estado Parte de que en España no tiene lugar la tortura o malos tratos salvo en casos muy aislados (CAT/C/55/Add.5, par. 10) y la información recibida de fuentes no gubernamentales, que revela la persistencia de casos de tortura y malos tratos por parte de las fuerzas y cuerpos de seguridad del Estado.

9. Son particularmente preocupantes las denuncias de malos tratos, incluyendo abuso sexual y violación, contra inmigrantes supuestamente por motivaciones racistas o xenofobas. El Comité constata que España se ha convertido en una importante vía de entrada a Europa de la inmigración, lo que ha supuesto un aumento significativo de la población extranjera en el territorio español. En este contexto adquiere especial importancia la omisión en el texto del artículo 174 del Código Penal de la tipificación de la tortura basada en “cualquier tipo de discriminación”, sin perjuicio de que, con arreglo al Código Penal, el racismo es una circunstancia agravante.

10. El Comité sigue profundamente preocupado por el mantenimiento de la detención incomunicada hasta un máximo de 5 días, para determinadas categorías de delitos especialmente graves, durante la cual el detenido no tiene acceso ni a un abogado ni a un médico de su confianza ni a notificar a su familia. Si bien el Estado Parte explica que esta incomunicación no implica el aislamiento absoluto del detenido, ya que este cuenta

con asistencia de un abogado de oficio y de un médico forense, el Comité considera que el régimen de la incomunicación, independientemente de los resguardos legales para decretarla, facilita la comisión de actos de tortura y malos tratos.

11. El Comité expresa igualmente su preocupación por lo siguiente:
- a) La prolongada dilación de las investigaciones judiciales respecto a denuncias de tortura, que puede dar lugar a que los condenados reciban indultos o no lleguen a cumplir condena debido al largo tiempo transcurrido desde que se cometió el delito. Tal dilación posterga la satisfacción de los derechos de las víctimas a una reparación moral y material.
 - b) La abstención de la administración, en ciertos casos, de iniciar procedimientos disciplinarios cuando hay un proceso penal en curso, a la espera del resultado de la acción penal. Debido a los retrasos de los procesos judiciales, esta situación puede dar lugar a que una vez se resuelva el proceso penal, la acción para hacer efectiva la responsabilidad disciplinaria haya prescrito.
 - c) Los casos de malos tratos en el transcurso de ejecución de mandatos de expulsión, en particular cuando se trata de menores no acompañados.
 - d) Las severas condiciones de reclusión de los presos clasificados en el denominado Fichero de Internos de Especial Seguimiento. Según se ha informado al Comité, quienes se encuentran en el primer grado del régimen de control directo deben permanecer en sus celdas la mayor parte del día, en algunos casos pueden disfrutar de sólo dos horas de patio, están excluidos de actividades colectivas, deportivas y laborales y sujetos a medidas extremas de seguridad. En general, pareciera que las condiciones materiales de reclusión y, en especial, la privación sensorial que sufren estos internos, estarían en contradicción con métodos de tratamiento penitenciario dirigidos a su readaptación y podrían considerarse un trato prohibido por el artículo 16 de la Convención.

Recomendaciones

12. El Comité recomienda al Estado Parte que considere la posibilidad de mejorar la tipificación del delito de tortura en el artículo 174 del Código Penal para completar su total adecuación al artículo 1 de la Convención. En este sentido el Comité recomienda que el Estado Parte siga tomando medidas para evitar incidentes racistas o xenofobos.

13. El Comité invita al Estado parte a considerar medidas cautelares a usar en casos de detención incomunicada, tales como:
- a) La práctica general de grabar en video los interrogatorios policiales con miras a proteger tanto al detenido como a los funcionarios que pudieren ser acusados falsamente de tortura o malos tratos. Esas grabaciones deberían ponerse a disposición del juez bajo cuya jurisdicción se encuentre el detenido. La omisión impediría atribuir efecto probatorio a cualquiera otra declaración que se atribuya al detenido.
 - b) El examen conjunto de un médico forense y un médico de confianza del detenido bajo este régimen.

14. El Comité recuerda al Estado Parte su obligación de realizar investigaciones prontas e imparciales y enjuiciar a los presuntos autores de violaciones de derechos humanos, en particular de tortura.

15. El Comit  recomienda al Estado Parte que vele para que en casos de tortura o malos tratos se inicien, sin perjuicio de su suspensi n a la espera del resultado de la acci n penal, procedimientos disciplinarios.

16. El Comit  alienta al Estado Parte a que tome las medidas necesarias para asegurar que los procesos de expuls n, en particular de menores, sean conformes a la Convenci n.

17. El Comit  recomienda finalmente que estas conclusiones y recomendaciones se difundan ampliamente en el Estado Parte en todos los idiomas que proceda.

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amnesty international

SPAIN

A briefing for the United Nations Committee against Torture

Introduction

In November 1997 the United Nations (UN) Committee against Torture examined Spain's third periodic report on its implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee welcomed the measures taken by the government to implement the core safeguards set out in the Convention, including the definitive abolition of the death penalty and the introduction into the new Penal Code of articles prohibiting torture and ill-treatment. However, it observed that the long delays in legal proceedings relating to torture, both at the investigation and trial stages, were "absolutely incompatible" with the promptness required by the Convention, and that court sentences against officials accused of torture were often nominal and seemed to show an "acquiescence which deprives punishment of its intended dissuasive and exemplary effect and conspires against the effective eradication of torture". The Committee expressed doubts about the Spanish Government's claims, in its report, that cases of torture and ill-treatment had been almost eradicated, and affirmed that it had continued to receive frequent allegations of torture and ill-treatment, many of which "appeared to reveal signs of racial discrimination". It also expressed concern at the way in which the continuing practice of extended incommunicado detention facilitated the practice of torture.

The Committee urged the authorities to take the necessary measures to curtail the excessive length of investigations into complaints of torture and ill-treatment; to adopt all possible legal measures to ensure that penalties for crimes of torture were effective and exemplary; and to look into ways of bringing an end to incommunicado detention and restrictions on the right of access of detainees to a lawyer of their choice. The Committee also urged the authorities to adopt procedures to investigate all cases of torture and ill-treatment

that came to their attention, by whatever means, even where the alleged victims had not lodged formal complaints.³

The Spanish government's fourth periodic report, to be examined by the Committee in November 2002, states from the outset that there is no torture or ill-treatment in Spain, except in "very isolated" instances. The Spanish authorities claim that this can be confirmed by the fact that allegations of torture or ill-treatment have disappeared from, or are very rarely mentioned in, Amnesty International reports, or in those of the Spanish Ombudsman.⁴

With regard to Amnesty International reports, the Spanish government's assertion is the contrary of the truth. Since Spain's third periodic report was examined by the Committee Amnesty International has published 21 external documents about Spain (from press statements to major reports), the bulk of which are concerned with allegations of torture and ill-treatment.⁵ (A list is attached to this briefing). In April 2002 the organization published a major report on race-related ill-treatment in Spain, which documented a large number of detailed individual complaints of torture and ill-treatment by persons of non-Spanish ethnic origin or by members of ethnic minorities, such as Roma.⁶ The organization has also documented many complaints and reports from detainees arrested and held incommunicado as suspected members or sympathizers of the Basque armed group *Euskadi Ta Askatasuna*

³Concluding observations of the Committee against Torture: Spain, 27.11.97. A/53/44, paras. 119-136.

⁴"...[es] motivo de gran satisfacción el hecho de que en nuestro país no tiene lugar la tortura o los malos tratos, salvo casos muy aislados. La constatación de esta afirmación la proporciona el hecho de que las denuncias por tales prácticas han desaparecido o son realmente escasas, así como los informes de Amnistía Internacional y del Defensor del Pueblo ante las Cortes Generales ..."CAT/C/55Add.5 de 2001.

⁵This number does not include *Amnesty International Report or Concerns in Europe* entries on Spain, or entries in Amnesty International newsletters, such as *The Wire*.

⁶"Spain: Crisis of identity: Race-related Torture and Ill-treatment by State Agents" (AI Index: EUR 41/001/2002).

(ETA). In addition Amnesty International has several times written to the Spanish Government to express its concerns about torture and ill-treatment and called on the government to consider a number of specific recommendations.

This document summarises and updates some of the main concerns of Amnesty International since 1997, as described in the attached documents.

Definition of torture in Spanish Penal Code (Article 1)

The definition of torture in Article 174 of the Spanish Penal Code contains similar wording to that of Article 1 of the Convention against Torture. Indeed, in its Concluding observations, made in 1997, the Committee noted that not only had Spain incorporated the offence of torture and other cruel, inhuman or degrading treatment or punishment into its domestic legislation, but had expanded on it in certain important respects. However, in the context of its work on race-related torture or ill-treatment Amnesty International has noted that the purposes outlined in Article 174 of the Spanish Penal Code are defined more narrowly and exclusively than those outlined in the Convention, with no reference to torture *“for any reason based on discrimination of any kind”*.⁷ Amnesty International feels that this is an important omission in the definition of torture in Spanish law.⁸

Torture during incommunicado detention (Article 2, Article 11, Article 12, Article 13)

⁷“A public authority or official commits torture if, by abuse of his office and for the purpose of obtaining a confession or information from any person or of punishing him for any act he has committed or is suspected of having committed, he subjects that person to conditions or procedures which, by their nature, duration or other circumstances, cause him physical or mental suffering, entail the suppression or diminution of his faculties of conscience, discernment or decision-making, or in any other way infringe his moral integrity”.

⁸For example, in the case of the sexual assault of Miriam Rosa Verástegui Templo, which is described briefly below, and is described in detail in the above-mentioned report on race-related torture and ill-treatment, the Provincial Criminal Court of Madrid set aside the charge of torture on the grounds that the assault had not been carried out in order to obtain a confession or as punishment. Grounds of “discrimination of any kind” were not legally applicable under Spanish law.

Amnesty International opposes incommunicado detention. The organization believes it to be beyond question that incommunicado detention facilitates torture and ill-treatment. Without visits by lawyers, independent medical professionals, family or others to provide scrutiny of the detainee's health and conditions, such human rights violations are far more likely to occur.

Amnesty International continues to receive frequent allegations of torture in incommunicado detention. Some of these are highly detailed and corroborated by medical evidence. The organization's longstanding concerns about such torture were last expressed in a report that was published in June 1999 and entitled "*Spain: A briefing on human rights concerns in relation to the Basque peace process*" (AI Index: EUR 41/01/99). Amnesty International's main concerns about incommunicado detention can broadly be summarised as follows:

- Article 520 bis of the Code of Criminal Procedure (CPP), introduced by Organic Law 4 of 25 May 1998, extends to five days the total period during which detainees accused of terrorist-related offences may be held incommunicado (48 hours in addition to the maximum 72 hours otherwise provided before a detainee must be released or taken before a judge). Article 527 of the CPP severely restricts the right of such detainees to legal and medical access and prohibits any communication of the fact, or place of arrest and detention to relatives or friends. Detainees are permitted contact only with a state-appointed lawyer, but such contact is in turn very restricted. Detainees may not meet in private with the state-appointed lawyer after a police statement is made. The lawyer does not attend interrogation sessions prior to this and is silent while the statement is being made, thereby effectively reducing his or her role to that of mere observer. This point has also been made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).⁹ These concerns about drastically curtailed legal access and prohibition on communication with the outside world are also shared by the Human Rights Committee, the UN Commission on Human Rights, and the UN Special Rapporteur on torture, among others, as well as by the Committee itself.
- Requests to extend incommunicado detention must be "substantiated" ("*mediante comunicación motivada*") by the competent judge. However, it is Amnesty International's experience that such "substantiation" is usually based simply on a reference to an individual's suspected links with terrorism - traditionally with ETA. There is no further elaboration of evidence and the request is usually automatic. Judges can, at any time, require information, or personally, or by delegation, obtain information on the situation of the detainee where he or she is detained. However,

⁹"... the fact that the detainee may not consult in private with a lawyer appointed on his behalf either before or after the making of his statement is most unusual. Under such circumstances it is difficult to speak of an effective right to legal assistance; the officially appointed lawyer can best be described as an observer". CPT/Inf (96), Part 1, paragraphs 48 and 52.

this is left to the judge's discretion, and in practice judges rarely appear to avail themselves of their right to obtain information personally.

- Detainees held incommunicado may see court-appointed forensic doctors every day but are not allowed a doctor of their own choice.¹⁰ In a report published in 2000 the CPT recommended that: "persons held incommunicado ... be guaranteed the right to be examined by a doctor of their own choice, it being understood that such a second examination may take place in the presence of a State-appointed forensic doctor".¹¹ Amnesty International shares with the CPT a concern about the quality of the medical reports issued with regard to detainees held incommunicado. Another difficulty in obtaining medical evidence is that the kinds of torture frequently alleged by detainees include torture which cannot be easily noted, eg. recourse to asphyxiation by the placing of a plastic bag over the head; application of electric shocks; standing for prolonged periods or performing physical exercises to the point of exhaustion; even blows to the body, if inflicted with an open hand or through a blanket or foam rubber.

¹⁰This is not in accordance with the Standard Minimum Rules for the Treatment of Prisoners, Part II, C, 91, which states: "An untried prisoner [either in police custody or in prison custody] shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred".

¹¹CPT/Inf (2000)5

- Amnesty International does not believe that torture in Spain is systematic, but it is concerned, as stated above, about the frequency of the allegations of torture, which cannot all necessarily be explained away as a strategy by detainees to undermine the moral credibility of the authorities. Amnesty International has received some very serious and highly detailed reports, which appear to be corroborated by medical evidence. Many of the allegations referred to the practice of asphyxiation with plastic bags (*“la bolsa”*); repeated kicks and blows of the hand on the head or testicles; forced physical exercises for long periods of time; claims of sexual harassment or abuse; threats of execution, rape, miscarriage or injury to partners and relatives. Some reports have also referred to the practice of immersing the head in water (*“la bañera”*) or to the application of electrodes to penis, stomach, chest or ear lobes. Individual cases have been described in successive Amnesty International documents.¹²
- Although convictions of torturers occur, these are rare. In its last published report the CPT noted that: “in the course of the delegation’s discussions with members of the General Council of the Judiciary, it emerged that examining judges and prosecutors may not always be displaying due diligence when allegations of ill-treatment are

¹²One such case is that of **Unai Romano Igartua**, who was arrested by plainclothes Civil Guards on 6 September 2001 in Vitoria-Gasteiz, and almost immediately transferred to Civil Guard headquarters in Madrid. He was held for the maximum five-day period and did not see the state-appointed lawyer during the first interrogations. While being held incommunicado, he was reportedly severely beaten on repeated occasions, subjected to electric shocks, forced to bend continually up and down, and told that his mother was dead. While being held, his head began to swell to the point where he temporarily lost his sight. Photographs were taken of his swollen head. Unai Romano admitted that, while in a cell, he tried to cut his wrists, but he claimed that the severe swelling of his head was due to beatings. This has been denied by the Civil Guards who claim he hit his head against a wall deliberately. Even if this were true - and Unai Romano has emphatically denied it - the question to be asked is what drives detainees to self-mutilation while they are being held incommunicado. Unai Romano was provisionally released from custody on 27 February 2002. His complaint of torture was admitted for investigation by Magistrates Court No. 25 in Madrid. (For further details see *Concerns in Europe : July-December 2001* [AI Index: EUR 01/002/2002]).

brought to their attention. The CPT's own findings during the 1998 visit suggested that judges and public prosecutors could be more proactive when they receive such allegations".¹³ In addition to this, the standard of forensic reports is often poor. Many detainees may also be afraid to report injuries to state-appointed doctors while being held incommunicado, and trials involving torture complaints are often delayed for long periods. Where torture has been found to have occurred and torturers are convicted, awards of compensation by courts to torture victims are usually low and may take between seven and 19 years to be decided.

In 1999 Amnesty International made four specific recommendations. It urged the Spanish authorities to: 1) immediately abrogate Article 520 bis of the CPP, extending incommunicado detention, and Article 527 of the CPP, which allows a detainee access only to an officially appointed lawyer, subject to special restrictions and prohibits any communication of place of arrest or detention to the outside world; 2) take steps to prevent the virtually systematic application of incommunicado detention with a view to abandoning the use of incommunicado detention outright; 3) forbid the use of hooding and blindfolding; 4) consider the introduction of video recording of interrogations, as a means both of protecting detainees held incommunicado and of law enforcement officers who may be falsely accused of acts of torture or ill-treatment.

The Spanish authorities have not commented to Amnesty International on these recommendations. Indeed, the authorities do not appear so far to have moved towards any of the recommendations made by treaty bodies or international organizations with a view to easing restrictions on incommunicado detention or making effective improvements to it, such as granting the right of access to a lawyer from the outset of custody. In the meantime, torture allegations continue to be made. In August 2001 the UN Special Rapporteur on torture submitted to the Spanish authorities for comment a large number of complaints of torture or ill-treatment by prison officers, Civil Guards or police, including approximately 55 by persons who had been held incommunicado.

Racism in law and practice

A number of articles of the Spanish Penal Code punish racial discrimination or racial hatred. The new Penal Code, which entered into force on 26 May 1996, recognizes a number of offences against the exercise of fundamental rights and public freedoms, involving the provocation of discrimination, hatred or violence on racist grounds. One potentially extremely important addition to the new Penal Code is Article 22.4, which, in combination with Article 66.3, sets out as an aggravating factor in a crime, punishable with comparative severity, one that is motivated by racist or other discriminatory motives.

¹³CPT/Inf (2000) 5

However, the Spanish Government has commented to the UN Committee on the Elimination of Racial Discrimination (CERD) - which, in 2000, expressed continuing concerns about “reports of racist attitudes on the part of the police and Civil Guard officers”¹⁴ - that, in practice, courts of law found it difficult to detect cases of racial discrimination because statements made to police or courts were more likely to be classified simply under the heading of “*lesiones*” (injuries), without regard to possible motive. Some judges appear to be reluctant to give serious consideration to evidence involving the aggravating factor of racism when requested to do so by prosecutors. Amnesty International believes that police officers and courts should ensure that every attempt is made to investigate, wherever relevant, the possibility of a racial motive for ill-treatment or torture, as well as the allegation of ill-treatment or torture in itself.

¹⁴CERD/C/304/Add.95, 19 April 2000. Concluding observations/Comments