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Spain

Adding insult to injury: The effective impunity of police officers in cases of torture and other ill-treatment

INTRODUCTION

For many years Amnesty International, together with other international and national non-governmental organisations (NGOs), and a range of UN and Council of Europe human rights bodies, have expressed serious concerns regarding torture or other cruel, inhuman or degrading treatment (ill-treatment¹) committed by law enforcement officials² in Spain and the effective impunity enjoyed by many in relation to these acts. This report highlights cases investigated by Amnesty International in which individuals reported they had been hit, kicked, punched and verbally abused by police officers, including while handcuffed, and both in the street and while in police custody. Complainants have also claimed that they were threatened with a gun or knife, whipped on the soles of their feet, and received death threats from police officers. In one case a detainee was told that if he did not cooperate, the police officers would rape his girlfriend. In another case, a man lost hearing in one ear for several weeks as a result of blows to his head from police officers.

Amnesty International considers that the continuing allegations of ill-treatment by police officers result from multiple failings by the Spanish authorities to comply with their international legal obligations which require them to take a range of legislative, judicial, and administrative measures to prevent ill-treatment. These standards also require the authorities to ensure the prompt, independent, impartial and thorough investigation of any case where there is reason to believe ill-treatment may have occurred. Furthermore, the authorities are required to ensure that persons responsible for such human rights violations are brought to justice in fair proceedings and to ensure an effective remedy, including reparation, for the victim. As stated by the European Committee for the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment (CPT), “The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions.”³

Spain's legal obligations to prevent torture and other ill-treatment

Spain is party to a number of international human rights treaties which impose upon the Spanish authorities obligations to prevent and punish ill-treatment by its agents and ensure redress and reparation to the victims of such treatment. These treaties include the **International Covenant on Civil and Political Rights (ICCPR)**, the **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture)**, and the **European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**. In addition, on 6 April 2006 Spain ratified the **Optional Protocol to the UN Convention against Torture**, which, among other things, requires Spain to create, maintain or nominate one or more bodies to carry out regular visits to all places where people are deprived of their liberty, in order to prevent ill-treatment. Spain is also party to the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, and as such has permitted regular and ad hoc visits from the CPT⁴ to all places where people are deprived of their liberty.

Article 1 of the UN Convention against Torture defines torture for the purposes of the treaty as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official.” The UN Convention against Torture also puts obligations on states in relation to “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official” (Article 16). All forms of torture and other ill-treatment are expressly prohibited under international law, in all circumstances.

Article 7 of the ICCPR and Article 3 of the ECHR require the Spanish authorities to ensure that no person is subjected to torture or other ill-treatment. In the face of allegations that an act of torture or other ill-treatment has occurred, these treaties (including the UN Convention against Torture) require the authorities to ensure that a prompt, independent, impartial and thorough investigation is conducted, and that all persons responsible for such acts are brought to justice. The treaties also require the

Spanish authorities to ensure that victims of such treatment have access to an effective remedy and receive adequate reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.

Article 15 of the **Spanish Constitution** affirms the right to life and physical integrity, and prohibits torture and degrading or inhuman treatment or punishment in all circumstances⁵. The criminal code of 23 November (1995) defines and establishes the penalties for acts of torture committed by public officials in Articles 174 – 176. The maximum penalty for torture is six years' imprisonment and disqualification from office for up to 12 years. The law also criminalises the actions of a public official who, failing in his or her professional duty, allows torture or other ill-treatment to be committed by another person.⁶

The cases that Amnesty International has researched, including those documented in this report, reveal pervasive and structural shortcomings in the prevention, investigation and punishment of ill-treatment. Similarly, the report of the CPT on its visit to Spain in 2005 noted that, taking into account the standards of the European Court of Human Rights in determining the “effectiveness” of an investigation into ill-treatment, “none of the cases reviewed by its delegation during the 2005 visit could be described as being effective investigations”⁷, concluding as a result “the safeguards currently in place for persons deprived of their liberty by law enforcement agencies do not adequately protect them from ill-treatment.”⁸ In their reports, the Council of Europe Commissioner for Human Rights and the United Nations Special Rapporteur on torture have referred to many of the issues highlighted in the present report.

In interviews with Amnesty International in 2007, incidents of ill-treatment by law enforcement officials were generally acknowledged by representatives of human rights ombudsperson offices, judicial authorities, and police bodies. Many of them, however, claimed that such incidents occurred only in isolated instances and that the overwhelming majority of complaints of ill-treatment made against law enforcement officials were false (without specifying whether these complaints were actually investigated thoroughly). The response of the Spanish Government to the report of the CPT of its visit to Spain in 2001 showed the same attitude, claiming that “torture or ill-treatment ... by officials of the National Police Corp [is] practically non-existent.”⁹

Commenting on similar statements by officials, in 2002 the UN Committee against Torture¹⁰ expressed concern about “the dichotomy between the assertion of

the State party that, isolated cases apart, torture and ill-treatment do not occur in Spain ... and the information received from non-governmental sources which reveals continued instances of torture and ill-treatment by the State security and police forces”¹¹. The failure to investigate each individual case also impedes the identification of structural deficiencies that facilitate ill-treatment and thus prevents institutional improvements from being implemented.

While Amnesty International does not consider ill-treatment by the Spanish law enforcement officials to be routine, based on its research the organization does contest the suggestion that it is rare and that the responsibility for its occurrence lies exclusively with a handful of rogue police officers. Amnesty International recognises the difficulties encountered by police officers in carrying out their duties when faced with individuals who may be dangerous and violent, and the personal risks they run. The organisation also recognises that false accusations may sometimes be brought against officers but the organisation considers that the persistent failure adequately to investigate every claim of ill-treatment serves neither to ensure that those responsible are held accountable nor to ensure that those falsely accused have their names authoritatively cleared. Such failures protect neither potential victims of ill-treatment nor officers potentially the victims of false allegations. Amnesty International recognises that the reputation of the vast majority of law enforcement officials, who carry out their duties professionally, is unfairly tarnished by the actions of those officers who commit acts of ill-treatment. Once again, the failure to ensure accountability of those responsible for ill-treatment, including by showing to the public that this has been done, serves further to undermine the credibility of the law enforcement bodies in Spain as a whole. Amnesty International’s research indicates that the cases documented in this report are not isolated incidents. Rather, the cases have been chosen as examples of repeated failings in the system.

Certain high-profile cases have received strong condemnation from government representatives and Amnesty International welcomes positive steps taken by the autonomous regional police force of the Basque Country (Ertzaintza) including the introduction of “quality control” mechanisms during detention (consisting of detailed procedures which are closely monitored) and video-recording of large parts of police stations. The organisation also considers positively the proposal of the Catalan autonomous government to create a police ethics committee which would report to the government on cases of ill-treatment, and the proposal to introduce video-recording in all areas of police stations under its control. These measures are all a clear step in the right direction but Amnesty International regrets that they still

fall short of the recommendations made by human rights bodies aimed at combating ill-treatment and impunity most effectively.

Following an incident of alleged ill-treatment by law enforcement officials, cases frequently follow the same pattern: non-existent or inadequate internal investigations and prompt provisional discharge¹² of any judicial complaint on the basis of a lack of evidence, even when medical or other credible evidence exists to support the allegations. When cases do come to trial, they often end in acquittal due to the non-identification of the officers responsible, or in nominal sentences. It is not unusual for the proceedings to continue for several years, following repeated closure of the case by the investigating judge¹³. Victims frequently complained to Amnesty International that investigating judges and prosecutors relied too heavily on statements by police while not giving equal credence to victims or witnesses. Amnesty International is also concerned about cases in which law enforcement officials lodged complaints which appeared designed to discredit the victim's testimony in an attempt to cover up evidence of their own wrongdoing or to intimidate victims of ill-treatment into withdrawing their own complaint against police officers. Other factors identified in this report as contributing to effective impunity for ill-treatment by law enforcement officials in Spain include:

- Inadequate initial training and insufficient ongoing training in the appropriate use of force and the applicable human rights standards;
- lack of protocols and clear guidance for police on use of force;
- lack of systematic video- and audio-recording in all areas of police stations where detainees may be present (e.g. cells, communal areas, interrogation rooms);
- failure to ensure that detainees are examined by a medical doctor, outside the presence of the police (unless the doctor concerned requests otherwise in a particular case);
- inaccurate or incomplete medical reports;
- obstacles to an individual being able to register a complaint about police conduct at police stations and courts;
- excessive delay in criminal proceedings and complaints by police being heard much sooner than complaints against them, even when relating to the same incident;
- difficulty identifying officers responsible because they are not wearing identifying badges or wear balaclavas;

- failure by police officers to prevent and/or report ill-treatment by colleagues, and a misguided “esprit de corps” which leads to officers covering up unlawful behaviour of others;
- failure of the internal police complaints mechanisms to ensure allegations are promptly, thoroughly and impartially investigated;
- failure of the government to establish an effective independent mechanism to investigate allegations of serious human rights violations by police officers;
- granting of pardons to police officers convicted of ill-treatment;
- failure to dismiss or apply other appropriate disciplinary sanctions, and even in some cases, promotion of officers convicted of ill-treatment.

Amnesty International is deeply concerned that the reluctance of the Spanish government to face up to the problem of ill-treatment by law enforcement officials and the failings of the internal disciplinary and judicial investigation system is exacerbating the climate of impunity which fosters further incidents of ill-treatment. The failures of the Spanish authorities in this area constitute a violation of its obligations under international law. Until the government takes effective action to investigate allegations and bring to justice all those responsible for ill-treatment, law enforcement officials will remain above the law.

POLICE COMPLAINTS INVESTIGATORY MECHANISMS

Outside of the criminal justice system, incidents of alleged police ill-treatment may be investigated through the internal affairs (disciplinary) unit of the police force involved. Additionally, the national or regional human rights ombudsperson has some limited powers of investigation.

Law enforcement bodies in Spain

Responsibility for law enforcement in Spain is divided among a number of bodies operated at national, autonomous regional (*Comunidades Autónomas*) and local level. There is also a distinction between forces of an exclusively civilian nature and the Civil Guard, which is both a civilian and military force under the control of both the Ministry of Interior and the Ministry of Defence.

State level

There are two state-wide law enforcement agencies – the National Police (*Cuerpo Nacional de Policía*, CNP) and the Civil Guard (*Guardia Civil*). The National Police is responsible for law enforcement primarily within large towns and cities while the Civil Guard operates in rural areas, smaller towns and territorial waters, and is also responsible for traffic and border control. The Civil Guard may also act as a military force under the command of the Ministry of Defence.

Autonomous regional level

Three of Spain's autonomous communities operate their own autonomous regional police forces which have assumed competencies previously held by the National Police or Civil Guard in that area. The forces currently in operation are the Mossos d'Esquadra in Catalonia, the Ertzaintza in the Basque Country, and the Policía Foral in Navarra. In Galicia, Valencia and Andalucía, special police units exist which form distinct police bodies within the National Police.

Local level

District or town council (*ayuntamiento*) police forces also exist, known as Municipal or Local Police. They act under authority of the council and their jurisdiction extends only to the area governed by that same council. Their responsibilities traditionally have included areas such as traffic regulation and administration but these are increasing and some now also have public security functions.

Internal police investigatory mechanisms

Each police force has its own internal disciplinary structures which are responsible for investigating offences allegedly committed by their officers. Serious disciplinary offences by officers within the National Police are investigated by the Directorate

General's Personnel Division (National Police Discipline Unit). Lesser offences are examined at the local level, in the officer's unit or regional post. In the Civil Guard all alleged disciplinary offences are investigated in the officer's territorial division. This process is overseen centrally by the Civil Guard Discipline Service within the Personnel Sub-Directorate.

Within the Ministry of the Interior's Secretariat of State for Security there exists an inspectorate for investigating citizens' complaints, whose powers are based on the Royal Decree of 208/96 of 9 February 1996. In cases relating to the national level police services (the National Police and the Civil Guard), the Secretary of State can order an investigation, but the aim of the investigation is to prevent recurrence of such an incident rather than to provide restitution for the victim or sanction misconduct in a particular case. The investigators have the power to interview the alleged victim and possible witnesses and ask for information from the relevant police station. If the information provided is incomplete or inadequate they must ask the Secretary of State to give them a mandate to investigate further. The staff responsible for conducting these investigations lack specific guidelines on how to operate. Amnesty International is concerned that, as a result, the work of the inspectorate staff is conducted on the basis of personal discretion in each case.

The results of an investigation may lead to new instructions to the law enforcement bodies from the Secretary of State if a systemic failing is identified. Alternatively, the Secretary of State may order the opening of a disciplinary investigation. If evidence of criminal misconduct arises the Secretary of State will transmit this information to the public prosecutor and the internal affairs unit of the relevant law enforcement body. If the case is already under judicial investigation, the Secretary of State can continue investigating but cannot order any disciplinary sanction until the judicial proceedings conclude, and is then bound by the judicial findings.

The autonomous regional police forces (for example, the Ertzaintza in the Autonomous Community of the Basque Country and Mossos d'Esquadra in Autonomous Community of Catalonia) have their own internal affairs units. The internal affairs unit of the Ertzaintza is directly responsible to the Autonomous Vice-Counsellor for Security rather than to a superior in the police body itself. The Ertzaintza also operates a "quality control" regulatory system which gives detainees the opportunity to complete confidential questionnaires regarding their experience in

custody. Any breach of the quality standards is investigated by a body under the Ertaintza Technical Secretariat.

Where a disciplinary investigation uncovers evidence of possible criminal wrongdoing, it is referred to an investigating judge or public prosecutor. In this situation, all disciplinary investigations are suspended pending the outcome of a final judicial decision. The findings of the court must be taken as fact. As a result, disciplinary proceedings cannot conclude until the legal process is complete. This frequently takes several years to finalise and as a result can have a negative impact on internal investigations and disciplinary sanctions.

According to the report on its mission to Spain in 2001, the CPT found that personnel responsible for investigating alleged disciplinary offences by the national police and Civil Guard enjoyed substantial discretion in their management of an investigation and lacked adequate guidance on how to exercise such discretion fairly and consistently.

The CPT has questioned the efficacy of the current model and recommended the creation of a fully independent investigating agency to process complaints against law enforcement officials. The UN Special Rapporteur on torture has also commented on “the questionable independence and impartiality of internal accountability mechanisms with regard to law enforcement officials [in Spain]” citing this as a factor in the lack of effective investigations.¹⁴

During its visit to Spain in July 2001, the CPT gathered “ample evidence, including of a medical nature, consistent with allegations of ill-treatment.”¹⁵ The CPT assessed the existing internal accountability mechanisms of the National Police and Civil Guard and concluded that these were inadequate. It recommended the government consider the creation of “a fully independent investigating agency to process complaints against law enforcement officials.” This body “should have the power to instigate disciplinary proceedings against law enforcement officials and refer cases to the judicial authorities which are competent to consider whether criminal proceedings should be brought.”¹⁶ Amnesty International regrets that the government has taken no action to implement these recommendations since they were made, more than six years ago.

The Council of Europe Commissioner for Human Rights at the time, Álvaro Gil-Robles, visited Spain in March 2005. His report on the visit raised a number of

concerns relating to allegations of ill-treatment by law enforcement officials and notes, “Establishing the truth in cases of alleged ill-treatment clearly calls for a thorough overhaul of the current internal investigation procedures of the law enforcement agencies, with the development of new action protocols which are transparent in terms of the procedure followed and the results obtained ... If the firmest possible action is not taken in this respect, suspicions will remain concerning the truthfulness of allegations of torture or ill-treatment, and official denials will be powerless to dispel them.”¹⁷

External oversight mechanisms

It is also possible for complaints against law enforcement officials to be examined by the National Ombudsperson (*Defensor del Pueblo*) or the regional equivalent where this exists, for example, the *Ararteko* in the Basque Country and the *Síndic de Greuges* in Catalonia. The ombudspersons can receive complaints from individuals or open a case on their own initiative, although the latter is rare. These ombudspersons have the competency to enter into correspondence with the relevant police body to seek further information on an incident and can make recommendations on their findings, but have no independent powers of investigation and their recommendations are not binding.

The ombudspersons can refer a case to the public prosecutor if there is evidence that it may constitute a criminal offence, but in practice this rarely occurs as cases received by the ombudsperson have usually already been submitted as criminal complaints. As with internal investigatory mechanisms, the ombudspersons are bound by the findings of the court.

CAUSES OF EFFECTIVE IMPUNITY

The effective impunity enjoyed by many police officers results from a number of factors that range from obstacles to lodging a complaint to failure by the authorities to impose appropriate sanctions. Other causes include the lack of independent investigations or the failure to investigate thoroughly; incomplete or inaccurate medical reports; insufficient evidence; intimidation of complainants; lack of impartiality in the investigation and excessive delays in the procedure.

The cases below illustrate these factors and also highlight the range of ill-treatment experienced, which in some cases has led to death or serious injury. In the majority of cases those accused of ill-treatment have not been subject to disciplinary measures, and in many instances preliminary criminal investigations were closed at an early stage so officers were not brought to trial. In one of the few instances where an officer was convicted of torture by the Supreme Court, he was later promoted to chief of police in his region.

Obstacles to lodging a complaint

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by, its competent authorities.

Article 13, UN Convention against Torture

Great care should be taken to ensure that persons who may have been the victims of ill-treatment by public officials are not dissuaded from lodging a complaint.

Para. 39, CPT General Report 14

Amnesty International's research revealed that some victims of alleged ill-treatment by police officials were obstructed in their quest for justice from the outset as a result of impediments they encountered when trying to lodge a complaint.

The case of Lucian Padurau

Lucian Padurau was arrested on 27 July 2006 by five autonomous regional police officers (Mossos d'Esquadra) outside his house in Barcelona, in a case of mistaken identity. Speaking to Amnesty International he described how he was beaten on the street as he was being arrested and how his pregnant wife, who was with him at the time, was also physically assaulted. He reported being physically assaulted again while in the police car on the way to the police station, as well as being threatened with a gun and told "You'd be better off confessing to everything. If the judge lets you off we'll kill you." He said police officers continued to beat him until they arrived at Les Corts police station, and that that upon their arrival a police officer at the station told those who had arrested him, "Don't hit him anymore, there are cameras here."

The next day Lucian Padurau was released from custody after the police realised he was not the man they had been seeking. He told Amnesty International that the police officers who had assaulted him apologised, saying "Sorry, it's just the way life is" and offered to "help him out" if he ever had any "problems with anyone."

A few days after his release from custody, Lucian Padurau went to an investigating court to report the ill-treatment. He told Amnesty International that when he tried to register his complaint the court official told him it could not be recorded unless he could give the name and identification number of each of the officers involved. The court official recorded the complaint only after he threatened to inform the media of what had occurred. Following judicial investigation, the case was pending trial in September 2007.

Lack of independent investigation

States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated...The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial.

Principle 2, Principles on the Effective Investigation and Documentation of Torture

Independent entities are essential for investigating and prosecuting crimes

committed by those responsible for law enforcement.

Para.1310, E/CN.4/2001/66, Special Rapporteur on torture

Many of the investigations into complaints of ill-treatment that Amnesty International researched demonstrated an apparent lack of impartiality and objectivity. At present, criminal investigations into cases of alleged ill-treatment are investigated by investigating judges with the assistance of the judicial police. In some instances the investigating judge will request that evidence be gathered by officers from a police force different to that being investigated (for example, Civil Guards could be asked to investigate allegations against a national police officer, or national police officers might investigate allegations against officers from autonomous regional police forces) but this practice is not standardised or compulsory. In some cases investigated by Amnesty International an officer from the same force as those alleged to have been responsible for the ill-treatment was assigned to investigate the allegations against them. Such investigations do not meet the requisite standards of independence. The CPT has noted that even in a legal system where a judge or prosecutor leads the investigation “it is not unusual for the day-to-day responsibility for the operational conduct of an investigation to revert to serving law enforcement officials... It is important to ensure that the officials concerned are not from the same services as those who are the subject of the investigation. Ideally, those entrusted with the operational conduct of the investigation should be completely independent from the agency implicated.”¹⁸

Police trade union representatives interviewed by Amnesty International considered that police officers would not attempt to cover up wrong-doing by colleagues, but some of them also reported that ill-treatment was tolerated to a certain degree by those in authority “turning a blind eye” to less severe incidents and as a result of a misguided “esprit de corps.” Amnesty International considers it to be of key importance that investigations into cases of alleged police ill-treatment be investigated by personnel who are independent from the rest of the police force.

The Case of Sandra Guzmán

Sandra Guzmán told Amnesty International that on 25 December 2006 she witnessed a police officer from the autonomous regional police force (Ertzaintza) partially strip search, hit and kick several men of North African origin in a park in La Casilla, Bilbao. The officer’s colleagues (approximately seven in total) did nothing to intervene. Sandra Guzmán says she never saw the men offering any resistance to the police officers. She attempted to intervene, telling the police officers to arrest the

men if they had committed a crime but to stop treating them in such a violent manner. One of the police officers told her that if she did not approve of what was happening she could make a complaint.

On 27 December Sandra Guzmán made a complaint regarding the incident at the autonomous Basque government's Department of the Interior (which has responsibility for the autonomous regional police force) and a few days later she registered a criminal complaint at Investigating Court 1 of Bilbao.

Sandra Guzmán told Amnesty International that in mid-January 2007 a police officer from the internal affairs unit of the Ertzaintza visited her elderly parents' house in Bilbao in search of her. Sandra Guzmán's parents told her that this officer said that the officer involved in the incident had "overdone it" and had acted "out of line" but tried to convince her mother that Sandra Guzmán should withdraw the complaint because it would inconvenience her to have to give a formal witness statement.

The following day Sandra Guzmán telephoned the internal affairs officer (who had left a message for her to contact him). She says the officer told her that he had just received notification of her criminal complaint (to the investigating court) which would take priority over the internal investigation. She says he attempted to question her, stating that he was acting in the capacity of judicial police (police acting on behalf of the investigating judge) and that "sooner or later" he would be the one to take her statement. She refused to speak with him further on the matter without consulting her lawyer, commenting on the lack of impartiality that she was being questioned by an officer of the same force as the agents she had reported and who had, in addition, appeared at her parents' house and recommended that she withdraw the complaint.

When commenting on another case (that of Juan Martínez Galdeano, below) the Council of Europe Commissioner for Human Rights at the time, Álvaro Gil-Robles, expressed his surprise and alarm that the investigating court initially "did no more than apply for information to the very Guardia Civil post where the offences had allegedly been committed and to the very lieutenant accused of committing them. Needless to say, the officers concerned flatly denied the allegations and the legal proceedings were dropped."¹⁹ The case was subsequently re-opened and three police officers were convicted of ill-treatment. Amnesty International shares this concern about a system that has no formal procedure to ensure that judicial authorities do not

call on police officers to conduct investigations against officers from the same police force, let alone being called upon to investigate themselves.

Failure to investigate

Each State party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture [or other cruel, inhuman or degrading treatment or punishment] has been committed in any territory under its jurisdiction.

Article 12, UN Convention against Torture

The responsibility for investigations falls under the State party's obligation to grant an effective remedy.

UN Human Rights Committee, Hugo Rodríguez v. Uruguay, 19 July 1994, para.12.3.

Amnesty International has documented a pattern throughout Spain where complaints against the police are frequently provisionally discharged by investigating judges immediately or after minimal investigation. This appears to be the result, in many cases, of judges and prosecutors relying too heavily on statements by police while not giving equal credence to the statements of victims or other witnesses.

The importance of a thorough investigation is highlighted in the report of the CPT's visit to Spain in 2005, in which it noted that "one of the most effective ways of preventing ill-treatment by law enforcement officials lies in the diligent examination by the competent authorities of all such complaints brought before them and, where ill-treatment is found, the imposition of appropriate disciplinary and/or criminal penalties. If the judicial authorities act promptly and effectively to investigate complaints, it will be more likely that true allegations will be substantiated and false complaints revealed as unfounded."²⁰

This reiteration of the importance of thorough investigations was emphasised by the European Court of Human Right in its judgment in the case of *Martínez Sala and Others v. Spain* (a description of the judgment follows below).

The Case of Beauty Solomon

Beauty Solomon submitted two complaints of physical assaults by the same two national police officers relating to three separate incidents. She presented a complaint to Investigating Court 8 of Palma de Mallorca on 21 July regarding the first two alleged assaults (that occurred on 15 and 21 July), and submitted a second complaint on 25 July to Investigating Court 2 of Palma de Mallorca July concerning an alleged assault which occurred on 23 July. When submitting the complaints she included medical certificates issued by a public hospital recording evidence of her injuries.

In a report addressed to the first investigating court dated 11 October 2005, the chief of police confirmed that identity checks involving Beauty Solomon had taken place on 15 and 21 July as indicated by the complainant, but stated that no violent incident had occurred. In a report relating to the third alleged assault, addressed to the second investigating court and dated 28 December 2005, the same chief of police stated that police registers had no record of an identity check, or any other incident, taking place involving the complainant on 23 July. Neither of the investigating courts called any witnesses from the scenes of the incidents or conducted an identity parade, as requested by Beauty Solomon's lawyer, and the complaints were not investigated further.

Beauty Solomon's first complaint was dismissed on 17 October 2005 and Women's Link Worldwide, an international NGO representing Beauty Solomon, submitted an appeal against the dismissal. This appeal remained pending in September 2007. The second complaint was also dismissed by the investigating court (on 22 February 2006) on the basis that there was insufficient evidence of a crime to proceed with an investigation. Beauty Solomon appealed against this decision on 1 June 2006 but the Provincial Criminal Court of Palma de Mallorca upheld the original decision on 7 March 2007. The decision by the appeal court referred only to the letter of 28 December 2005 in its ruling, without mentioning the letter of 11 October 2005.

On 10 April 2007 Women's Link Worldwide presented a case to the Constitutional Court on behalf of Beauty Solomon on grounds of violation of her rights to due process (as well as non-discrimination, physical and moral integrity, dignity, and not to be subjected to torture or other inhuman or degrading treatment) as enshrined in international human rights law and the Spanish constitution. This case remained pending in September 2007.

Another case illustrating the reluctance of a judicial body to thoroughly investigate allegations of ill-treatment is that of Jordi Vilaseca, a young man from Torà in Catalonia who was arrested in April 2003 on suspicion of setting fire to an automatic cash machine.

The case of Jordi Vilaseca

Jordi Vilaseca's complaint to the investigating court states that:

On 1 April 2003 Jordi Vilaseca was arrested by autonomous regional police officers while driving home from work at about 7pm. He was taken to the regional police station in Lleida where he was brought into a large windowless room, searched and his possessions were confiscated. Jordi Vilaseca was left in the cell overnight, where he was forced by guards to remain standing in the corner facing the wall without leaning against it. After approximately 10 hours he collapsed from exhaustion and remained lying on the floor. The following morning he was made to kneel without resting on his heels for approximately four hours. Later that day he was taken to his home while police officers searched it. He remained handcuffed throughout the search. He was then returned to the police station.

Upon return to the same cell he was aggressively interrogated by a national police officer²¹ who pretended to strangle Jordi Vilaseca with his own dreadlocks, stating "These would be good for tying you to the radiator." At one point the officer pinned him to the wall by the neck, shouting, "Don't look at me!" and "Everyone talks in the end!" He was told he would be sent to prison in the Canary Islands where he would catch AIDS. He was also told that his girlfriend would be arrested and the police officers would rape her. After these interrogations Jordi Vilaseca was taken to make a formal police statement. He says it was obvious during the interrogations what the police officers wanted him to say, so he said it in his statement even though it meant incriminating himself. A duty roster lawyer was present while he made the statement but they were not able to speak to each other. He said that the officers were apparently not satisfied with the statement and took Jordi Vilaseca back to the cell for further interrogations and told him "he hadn't said enough." Some time later he was taken to make a new statement, accompanied by a hooded police officer. A new roster lawyer was present who asked for Jordi Vilaseca's home phone number so he could advise the family of the detention, but the police told him "Don't get involved."

After making his second police statement Jordi Vilaseca says he was transferred to another cell and given a ham sandwich to eat. He started to eat it but then lost

consciousness. When he woke he was in hospital, unable to speak, walk or control his bowels. There were police officers guarding his bed while doctors examined him. After a few hours he was sent to the Santa María psychiatric hospital where he remained until being discharged on 8 April 2003.

Jordi Vilaseca told Amnesty International that after leaving hospital he hired a private lawyer, who immediately made a complaint against the police for torture. As a result a judicial investigation into the case was opened by Investigating Court 2 of Lleida, but in May 2005 the investigating judge ordered the provisional discharge of the investigation at the request of the public prosecutor who argued that there was a lack of evidence and contradictory versions of events from the complainant and the police. Jordi Vilaseca's lawyer appealed against the decision to the Provincial Criminal Court – arguing that during the initial investigatory stage of proceedings the existence of contradictory testimonies was to be expected – and on 18 November 2005 the Provincial Criminal Court ordered the lower court to reopen the case. However, Jordi Vilaseca told Amnesty International that after the case was officially reopened no action was taken and in February 2007 the court then closed it again. Once again an appeal was introduced against the decision but it was rejected on 12 May 2007. Jordi Vilaseca lodged a case with the Constitutional Court at the end of May 2007 which remained pending in September 2007.

**European Court of Human Rights Chamber Judgement
Martínez Sala and Others vs. Spain, 2 November 2004**

On 2 November 2004, in the case of Martínez Sala and Others vs. Spain the European Court of Human Rights unanimously ruled that the failure to hold an effective official investigation into allegations of ill-treatment in custody violated the applicants' rights under Article 3 of the ECHR to be free from torture and other inhuman or degrading treatment or punishment.

The applicants were arrested in 1992 in connection with investigations into terrorist offences relating to a Catalan independence movement. After being released from custody they lodged a complaint of ill-treatment with an investigating judge in Madrid. The case was provisionally discharged on the grounds that the forensic doctors' reports showed no proof of ill-treatment. Appeals by the applicants were dismissed.

The applicants repeated their claims of ill-treatment when they were brought to trial at

the National Criminal Court, but the court declined to investigate this matter at the hearing. After the trial the investigating judge reopened the investigation into alleged ill-treatment, at the applicants' request. In November 1997 it was provisionally discharged again on the grounds of lack of evidence. This decision was upheld by the Provincial Criminal Court of Madrid and the Constitutional Court.

The European Court of Human Rights noted that the Spanish court had relied solely on the report of the forensic doctor when it found there was a lack of evidence to sustain the allegations of ill-treatment, and considered it "unfortunate" that the court had not taken statements from the arresting officers, the custodial officers, or the applicants. By denying all requests of the applicants for specific evidence to be obtained, the court had denied any reasonable opportunity to establish the veracity of their claim.

The Court held that there had been insufficient evidence submitted to establish the claim of ill-treatment and thus found no violation of Article 3 with respect to the substantive aspect of the claim. However, the Court found that there was a violation of Article 3 of the ECHR arising from the lack of a thorough and effective investigation into the allegations. This ruling underscores that the requirement to conduct a prompt, independent and impartial investigation is inherent in the state's obligations under the ECHR to prohibit torture and other ill-treatment.

The case of Sergio LD demonstrates a similar reticence by the investigating court to investigate the allegations of ill-treatment thoroughly.

The case of Sergio LD²²

On 16 March 2002, Sergio LD attended an anti-globalisation demonstration in the centre of Barcelona. Towards the end of the event some violent incidents occurred and around 100 people were arrested. Sergio LD was arrested and later charged with public disorder, damaging property and causing injury to several national police officers. He has always denied responsibility for these offences and claims he was the victim of mistaken identity. He reported that during his arrest and detention he was subjected to a series of assaults and threats which resulted in physical injuries that lasted for several months. For the past five years he has been undergoing counselling

for the resulting psychological harm. In his complaint to the investigating court, Sergio LD states that:

Sergio LD was arrested in the Plaza de Colón (Barcelona) by four masked plainclothes national police officers who threw him to the ground, handcuffed him and then pushed him into a police van where he landed on the floor. There were no other detainees present in the van. As he lay immobile one of the police officers closed the door repeatedly on his right leg causing injury to his shin and ankle. The same officer then beat him repeatedly on the left leg with his truncheon and pinched the injured areas roughly with his hand. Another police officer stamped on his head several times. Another officer tried to twist back his fingers. At the same time, police officers were spitting on him and threatening him, saying, “We’re going to kill you, you’ll pay for all of them.” They also called to the driver of the van saying, “What a pain it’s your turn to drive, you’re missing all the fun.”

The van was driven away and after a short time Sergio LD was pulled out of the vehicle and thrown to the ground. Two officers then picked him up and transferred him to a police car, forcing him violently against it head first “like a battering ram” before pushing him inside. Upon arrival at the La Verneda national police station an officer from the station punched Sergio LD in the stomach. He was then transferred to a room where he was made to kneel and look at the floor, while still wearing handcuffs. A police officer closed the window blinds and then three officers kicked and punched Sergio LD all over the body until he began to have muscle seizures and became temporarily incontinent. He believed they were going to kill him. Following this Sergio LD was made to sit on a chair with his hands tied behind his back while another officer took his identity papers. Sergio LD had begun to vomit at this time and the police officer gave him a rubbish bin to be sick in. Afterwards a police officer dressed in riot gear entered the room and, encouraged by those already present, hit Sergio LD in the face so hard that he fell off the chair. The officer then stamped on his head.

At this point, Sergio LD was taken to the medical unit inside the police station where his injuries were cleaned. The police officers remained present throughout the medical examination, leaving Sergio LD unable to speak to the doctor in private and report the abuse he had suffered. He was given a tranquilizer and the doctor recommended that he be taken to the emergency ward at the hospital due to his head injuries. Instead, he was returned to the room where he had been assaulted. A police officer wearing a scarf which covered the bottom part of his face took out a knife and

pressed it against Sergio LD's leg saying "Now you're going to tell me everything." He was transferred to another room where the same officer and another, who also had his face covered with a scarf, began to interrogate him regarding the demonstration he had attended and personal details about himself. They asked him repeatedly about a tattoo on his body, at which point he realised he had been wrongly identified as he does not have such a tattoo. While they interrogated him, one of the officers took out a leather whip and used it to beat Sergio LD on the soles of the feet. The threats continued and they told him they would throw him out of the window.

Finally Sergio LD was taken for fingerprinting and moved to a cell with other detainees. During the night he did not sleep but lost consciousness several times and suffered nausea. Throughout the night his cellmates requested medical attention for him but he was not taken to the hospital until 9am the following morning, after which he was returned to the police station and then taken before the judge to be charged with public disorder, damage to property and assaulting a police officer.

Sergio LD told Amnesty International that on 6 September 2002 he made a formal complaint to Investigating Court 2 of Barcelona regarding torture, assault on personal integrity and injury. As there were no CCTV cameras in the police station there was no video evidence to substantiate his allegations, but they were supported by numerous medical reports and positive identification of several of the officers during identity parades. Despite the gravity of the facts alleged, the public prosecutor and investigating judge classified the case as one of "faltas" (misdemeanours) instead of "delitos" (crimes) which meant that no in-depth preliminary investigation was conducted into the incident and the case was provisionally discharged in January 2003 on the basis of a lack of evidence. Sergio LD presented an appeal against this decision to the Provincial Criminal Court of Barcelona which ruled, on 9 December 2003, that the actions of the lower court had been incorrect and "absolutely unacceptable" and ordered the lower court to open an investigation into a possible crime of torture. At the time of this report going to print the case was still in the investigatory stage.

Amnesty International has also noted the failure of investigating judges to open investigations on their own initiative into apparent ill-treatment in cases where the victim does not make a formal complaint but evidence exists to indicate ill-treatment may have occurred. Such a duty is expressly stated in international standards which note that "Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-

treatment might have occurred.”²³ This obligation was reiterated by the UN Committee against Torture in its decision on a complaint brought against Spain in 1995 when it stated that “article 13 of the UN Convention against Torture does not require the formal submission of a complaint of torture. It is sufficient for torture only to have been alleged by the victim for the state to be under an obligation promptly and impartially to examine the allegation.”²⁴ The CPT has stated that “even in the absence of a formal complaint, [prosecutorial] authorities should be under a legal obligation to undertake an investigation whenever they receive credible information, from any source, that ill-treatment of persons deprived of their liberty may have occurred.”²⁵

The Case of Iona Collins

Iona Collins, a British citizen, went on holiday to Barcelona with a friend in June 2006. Following her attempt to intervene in what appeared to be a violent assault on a young woman by several police officers from the autonomous regional police force (Mossos d’Esquadra) Iona Collins was arrested by the same officers. She told Amnesty International that she was punched in the face by an officer as she tried to photograph the scene. This incident was witnessed by a friend accompanying her and two security guards outside a bar nearby. She was then taken to the Les Corts police station in Barcelona where she says she was subjected to further ill-treatment by police officers. She explained that when she was taken to a cell by approximately five police officers she started crying in a state of panic and tried to hold on to the bars of the cell to avoid being pushed inside. She was forced inside the cell by the officers, where they then began to beat her. She was kicked and punched all over the body and head. She was handcuffed while she lay on the ground and she was kicked in the head. The fear and panic made her temporarily incontinent and she believes that at one point she may have lost consciousness.

Iona Collins was persuaded by her lawyer not to make a complaint against the police officers involved because the lawyer considered that there were limited chances of success, despite the medical reports and photographs obtained after her release from custody which recorded her injuries, and testimony from witnesses at the scene of arrest.

Although Iona Collins made no formal complaint, in her testimony to the investigating court on 14 June she stated that she had been punched by police officers

at the scene of arrest and later in the police station, and that she had been kicked in the head after approximately five officers pushed her to the ground while trying to make her enter the police cell. She also told the court that she had bruising in various parts of her body. In accordance with Articles 12 and 13 of the UN Convention against Torture the court should automatically have ordered that an investigation be launched into these allegations. However, no such investigation was opened and Amnesty International was informed that no internal disciplinary inquiry had been conducted.

Iona Collins was convicted of resisting authority. The investigating judge did not take a statement from the friend of Iona Collins who was present at the scene and did not question the contradiction in the testimonies given by the two security guards. Iona Collins was ordered to pay compensation to the two police officers allegedly injured in the incident, as well as court costs, and initially sentenced to a six-month suspended jail term which was later replaced by a fine totalling 2,180euros.

Incomplete or inaccurate medical reports

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.

Principle 24, Body of Principles on the Protection of All Persons under Any Form of Detention or Imprisonment

Persons in police custody should have a formally recognised right of access to a doctor... Further, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police)... All medical examinations of persons in police custody must be conducted out of the hearing of law enforcement officials and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials.

Para. 42, CPT General Report 12

In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government

officials.

Principle 6, Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

Principle 2, Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

International standards set out the right of detainees to medical care and medical examinations as required while in detention. The effective exercise of this right is an important tool in preventing ill-treatment from occurring and is also of great importance in successfully prosecuting those responsible when ill-treatment occurs. The importance of having accurate medical reports that record injuries suffered in detention or during arrest was repeatedly underscored by judicial and prosecution representatives with whom Amnesty International delegates spoke. Many considered such reports to be the most important piece of evidence available in cases of alleged ill-treatment by police, particularly in cases in which the ill-treatment had taken place in custody where it is likely to have taken place out of sight of independent witnesses. As noted above, under international law the Spanish authorities are obliged to ensure that investigations into allegations of ill-treatment are effective. In some circumstances the existence of an accurate medical report is vital to the effectiveness of an investigation.

However, Amnesty International has received reports that in cases of alleged ill-treatment police officers have remained present during the medical examination of the victim. This is contrary to international standards (cited above) as it is likely to intimidate the victim into remaining silent about any ill-treatment and the causes of their injuries. It may result in medical reports that do not accurately reflect the detainee's physical and mental state at the time of examination if the victim does not indicate all their injuries to the examining doctor. This can make the report ineffective as a piece of evidence and may even prejudice the prosecution's case against the accused officers by apparently confirming that no ill-treatment took place (see for example the case of Daniel Díaz, below).

Amnesty International was alarmed to discover that some judges believed it was compulsory for police officers to remain present during medical examinations (in case of risk of flight or injury to the doctor), even stating that they would prosecute police officers for negligence if they left detainees alone with a doctor. This is in direct contradiction of the human rights standards elaborated by the CPT.

In other cases researched by Amnesty International it appeared that the examining doctor's own lack of diligence may have resulted in an inadequate medical report. Two days after being released from custody, Lucian Padurau, who suffers from haemophilia, was admitted to the Vall d'Hebron hospital where he required a blood transfusion due to his injuries. He had received two medical examinations while in custody but he says in neither case did the doctor enquire into the injuries he had received or report suspicions of ill-treatment, despite the fact Lucian Padurau told him he had been beaten by the police. In the view of Amnesty International this behaviour was in contradiction of the UN Principles of Medical Ethics in the Protection of Prisoners and Detainees against Torture (cited above). When the investigating judge asked the examining doctor why he had not reported the suspected ill-treatment he responded that it did not matter to him how the injuries had been caused as the patient could have been a rapist injured by his victim. The investigating judge stated that the doctor's actions had been an "inadequate" fulfilment of his professional duties and has reported him to the Catalan Health Board.

The Case of Marcos V²⁶

In his complaint of ill-treatment submitted to the investigating court, Marcos V (see below) stated that when he was taken to a local hospital in Madrid and examined by a doctor while he was in police custody on 1 December 2001, the doctor addressed him in a degrading tone and asked him "Is anything really wrong with you or did you come here to amuse yourself and waste my time?" Marcos V indicated where he felt pain but says the doctor told him there was nothing wrong with him and he was returned to the police station.

Marcos V's complaint of ill-treatment it was provisionally discharged (on 5 February 2003) on the grounds that there was no evidence that a crime had been committed, as there was no certified physical injury.

Insufficient evidence

All interrogation sessions should be recorded and preferably video-recorded, and the identity of all persons present should be included in the records.

Para 39.f, Consolidated recommendations of the Special Rapporteur on torture, A/56/156, 3 July 2001

The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

Principle 23, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees.

Para. 36, CPT General Report 12

A particular challenge in effectively prosecuting cases of alleged police ill-treatment is the fact that in many cases there is often a lack of evidence beyond the victim's own testimony. This is because many incidents of police ill-treatment take place behind closed doors, where there are no independent witnesses present. For this reason human rights bodies, Amnesty International and other NGOs have for many years recommended systematic and comprehensive video and audio recording in all areas of police stations where detainees may be present (except where it would violate their right to consult with their lawyer or a doctor in private). The evidence provided by these tapes could prove crucial to demonstrating that ill-treatment has occurred, particularly in cases where officers admit that force was used but argue that it was proportionate. Not only would these measures protect detainees from ill-treatment but they would also provide protection for law enforcement officials from false allegations. Such an impact has been noted by police and internal affairs representatives from the Ertzaintza interviewed by Amnesty International who state that accusations of ill-treatment have shown a significant decline since the introduction of video surveillance in the detention areas and interrogation rooms of their police stations. In its 2001 General Report the CPT noted that "Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest

both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations.”²⁷

The proposed use of video and audio recording in police stations was widely supported by all of those interviewed by Amnesty International delegates in Spain, including police representatives from various trade unions, representatives of the Office of Public Prosecutions, representatives of human rights ombudspersons’ offices, ministers and judges. Despite this overwhelming support the use of recording equipment continues to be highly limited in areas of police stations where detainees may be present, although the Ertzaintza police force has taken positive steps by introducing CCTV surveillance in communal areas of the custody areas of its stations.

Where video recording is available in police stations it is essential that tapes are kept for an adequate period of time in order to be of use for potential investigations. In the case of Lucian Padurau, the judge and prosecutor asked to see recordings from the police station made on the day of Lucian Padurau’s detention. They were told, however, that the tapes had already been erased (in line with what was claimed to be the standard procedure to erase tapes after 11 days). In such circumstances, the usefulness of video surveillance is completely undermined.

*The case of Driss Zraidi*²⁸

Driss Zraidi, a Moroccan national, was detained and subjected to torture in the autonomous regional police force station of Roses, Catalonia, on 3 August 1998. As a result of his ill-treatment he suffered several fractured ribs and numerous head injuries which required eight days’ hospital treatment as an inpatient.

Driss Zraidi made a complaint regarding his ill-treatment to the Investigating Court 5 of Figueres on 5 August 1998, which led to the opening of an inquiry by the General Directorate of Citizen Security (Direcció General de Seguretat Ciutadana). In January 2003, 10 officers were charged with torture and bodily harm and four more were charged for failing to prevent the crime. However, on 20 May 2004 all 14 of the accused were acquitted by the Provincial Criminal Court of Girona, despite medical reports attesting to the injuries suffered and an audio tape recording of the incidents which apparently recorded five different conversations in which officers, believed to include some of the accused, discussed the assault, and another which recorded the sounds of blows and cries. The court found that the incident “without doubt constituted the crime of torture” but claimed that it was impossible to determine

which of the accused officers was personally responsible for the attacks. A prior internal investigation within the police force had established the identity of the officers believed to be responsible but a key witness changed his testimony during the criminal investigation, making identification impossible. The internal investigation findings were not admissible to the court because the witnesses had not had access to a lawyer at the time that they made their statements.

The case was appealed to the Supreme Court, which confirmed the ruling of the Provincial Criminal Court. A case was filed on 26 October 2005 in the Constitutional Court claiming violations of due process and the prohibition of torture and other inhuman treatment. The judgment remained pending in September 2007.

The following case illustrates how lack of video surveillance and incomplete medical reports were obstacles to a successful prosecution.

The case of Daniel Díaz Gallego, Manuel Matilla Parrilla, Israel Sánchez Jiménez, and Marcos V

On 1 December 2001, Daniel Díaz Gallego, Manuel Matilla Parrilla, Israel Sánchez Jiménez, and Marcos V, participated in a demonstration in the centre of Madrid protesting against a new law relating to higher education. Towards the end of the demonstration the situation became volatile and a number of violent incidents occurred, which resulted in assaults on police officers, as well as damage to public goods and private property.

The four men were arrested on suspicion of involvement with these incidents. They claim that while in police custody they were subjected to serious ill-treatment by police. Upon release from custody they each presented criminal complaints against the police, which related very similar events. In his complaint of ill-treatment submitted to the investigating court, Daniel Díaz states that:

Towards the end of the demonstration he was grabbed from behind by a national police officer, pushed to the ground where his head hit the curb, and handcuffed. He was pushed into a police car where a police officer forced Daniel Díaz's head between his legs, causing him significant pain and impeding his breathing.

Upon arrival at Leganitos police station, Daniel Díaz was removed from the car and led inside the building by a police officer holding him by the neck who repeatedly

banged him against the doors and walls of the corridors. He was taken to an area by the lifts where he was pushed against a wall and the police officer kicked him from behind before searching him. He was constantly insulted and told to face the ground. He was slapped in the face several times and told that a police officer had been injured and “he would really have to pay for it.” He was beaten and kicked until he fell to the ground, where he was kicked again. He saw another detainee also being beaten on the ground by the same officer. A police officer, identified in the complaint as “X”, removed from Daniel Díaz’s backpack a carpentry chisel (which he was carrying home for a course he was studying) and pressed it hard against Daniel Díaz’s ear, causing considerable pain and breaking the skin. He did the same to the other detainee.

Daniel Díaz continued to be beaten and slapped while being told not to look at the officers present. Officer X threatened him repeatedly, saying the police officers would kill him but first they had to decide “how to enjoy it most.” At one point Daniel Díaz was slapped hard on the right ear and felt a small pop inside his ear followed by a buzzing sound. He lost hearing in that ear for a period of one month as a result. He was repeatedly threatened and told that he was responsible for throwing a brick that injured a police officer and that “we caught you and that’s it – you’re going to pay for it. You’re going to spend a long time in prison with all the trash like you, that’s if you get there alive.”

Officer X threatened him with a knife, saying “What do you think I’m going to do with this?” Other officers shouted, “Cut his neck” and “Cut off his balls so he’ll remember us.” The officer cut off two of Daniel Díaz’s dreadlocks telling him they would be a “war trophy.” They continued to slap him in the face.

Daniel Díaz and the other detainee were later taken to a small health clinic for a medical exam. When they entered the clinic they were taken to an empty waiting room. In this room the two detainees were beaten by four police officers who kicked them, punched them and kneed them. The beating ended when the officer X punched Daniel Díaz in the stomach, expelling all the air from his lungs and making him fall to the floor where another officer kicked him as he tried to regain his breath. The two detainees were put against the wall, handcuffed. A short while later the second detainee was taken for a medical examination and Daniel Díaz was left alone in the room. Officer X told him “Don’t even think about shouting” before kneeling him in the thigh and then giving him three small electric shocks in the same spot saying “this hurts, eh?”

Daniel Díaz was taken for a medical examination and asked what injuries he had. He said he did not know but that his whole body hurt and he pointed out various injuries, some of which he thinks the doctor did not note down. He did not say he had been beaten by the police because he was afraid of the consequences – two police officers (including Officer X) were present in the room throughout the examination. At this point he was told for the first time that he was under arrest for assault on a public agent and they were going to take him to a cell at the Moratalaz police station.

Daniel Díaz and the other detainee were consequently taken by police car to the Moratalaz station. Officer X brought him into the building pulling his hair and making him look at the ground continuously. Both detainees were made to stand against a wall while numerous police officers entered the room and hit them from behind.

Daniel Díaz was then taken to another room where he was read his rights, told the accusations against him, and given a duty roster lawyer. The officers told Daniel Díaz to tell them who had thrown the brick at the police officer. When he said he did not know who it was they told him they would blame him and he would go to prison for a long time.

He was returned to the other room where Officer X punched him twice in the face and then in the back of the head. He threatened to throw Daniel Díaz out of the window saying, “You wouldn’t be the first.” Daniel Díaz was beaten again in the stomach and backside and forced to remain standing facing the wall without leaning on it. Two police officers, with their faces covered, arrived and one of them told the other officer, “Stop hitting him, damn it!” when the latter assaulted him again. Daniel Díaz was taken down to the cells and questioned again over who had thrown the brick. Finally, he was searched again and placed in a cell with the three other detainees mentioned above.

On 14 January 2002, Daniel Díaz presented this complaint of illegal detention, torture and ill-treatment, threats, degrading treatment and assault on physical integrity to Investigating Court 2 of Madrid, supported by medical reports. On 24 June 2003 the court acquitted both accused police officers on the grounds that it could not be proven that they were responsible for the ill-treatment, despite confirming the evidence of Daniel Díaz’s physical injuries. Marcos V, Manuel Matilla and Israel Sánchez also

presented complaints alleging ill-treatment very similar to that described by Daniel Díaz but they were all rejected on the grounds of lack of evidence.

Intimidation of complainants

Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 13, UN Convention against Torture

Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation.

Article 3(b), UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Committee calls upon the State party to ... ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or prosecution [...]

Para.102, Concluding Observations of the UN Committee against Torture (Tunisia)
A/54/44

Amnesty International has found that in many cases of ill-treatment it has investigated, individuals making claims of ill-treatment by police have found themselves charged with resisting authority, resisting arrest, assault on a public officer, or other serious offences. Complainants in such cases have told Amnesty International that they believed such charges were filed in order to pressurise or intimidate them into withdrawing their complaint, or used as a tactic to undermine the credibility of their own complaint and testimony. This practice was recognised by members of various police forces interviewed by Amnesty International who acknowledged the “automatic habit” of filing such charges as a “self-defence tactic” aimed at protecting themselves against accusations of false imprisonment or assault. One officer remarked to Amnesty International delegates that it was difficult even for other officers to know if their colleague’s claim was true or not as some officers had been known to tear their own uniforms in order to lend credence to their story if they knew they had used excessive force. The CPT has noted that in such situations, “steps

should be taken to ensure that the equitable nature of proceedings is manifest” and “any use of force in the context of detention should, therefore be subject to serious scrutiny and should not be treated summarily”.²⁹

Furthermore, judicial bodies are faced with a particular difficulty in adjudication in cases of ill-treatment if an officer admits force was used but claims it was proportional and necessary. The determination of what force was “necessary” appeared to be interpreted broadly by some of those interviewed by Amnesty International. One police officer said, “The first thing you have to do [during arrest] is overcome their resistance, make them see who’s in charge. You have to hit them.”³⁰ This practice contravenes the UN Code of Conduct for Law Enforcement Officials, which states that “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”³¹ The Commentary to this article states that the “the use of force by law enforcement officials should be exceptional” and “in accordance with the principles of proportionality.”³² Likewise, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that “Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.”³³ The examples highlighted in this report include use of force which goes beyond that which could be considered necessary and proportionate in accordance with international standards.

The case of Daniel Guilló Cruz

According to his complaint to the investigating court, repeated in interviews with Amnesty International:

On the night of 11 January 2007 Daniel Guilló Cruz was accompanying his girlfriend Tamara Blanco Ovalles and another female friend home just after midnight in Ciudad de los Poetas, Madrid. They were stopped by two plain-clothes national police officers, who told Daniel Guilló to hand over the marijuana cigarette he had in his hand and any other drugs he was carrying. One of the officers then began to beat him as the other pushed him against a car, holding him by the neck. Daniel Guilló and the two women with him believed the men assaulting him were muggers, as they had not identified themselves as police officers. Such was the violence of the attack that the women used their mobile phones to call the emergency services to ask for police assistance.

Tamara Blanco's mother and brother had heard the cries for help as the incident took place outside their apartment building. They came to the scene and were also beaten by one of the officers. Uniformed police reinforcements arrived and joined the officers beating Daniel Guilló. It was only at this time that the victims became aware that the two men who had initially approached them were police officers.

Daniel Guilló was handcuffed and told he was under arrest for assault on a public agent. He was then punched in the face several times by one of the plain clothes officers, and suffered a broken nose as a result. His two friends were arrested for assault on a public agent and threats. When Tamara Blanco's mother went to the police station to enquire after her daughter, she was also arrested for assault.

Daniel Guilló told Amnesty International that the day following his arrest he was informed that he was additionally being charged with attempted homicide, almost 10 hours after originally being arrested for assault. It was alleged that he had taken a gun from one of the police officers' holsters and attempted to fire it repeatedly into the chest of one of the officers. It was claimed that it had not fired because the safety catch was in place. In their statements, which Amnesty International has reviewed, the police officers involved claimed that Daniel Guilló and his two friends were the aggressors and denied having used any disproportionate force against any of them. They also maintained that they had identified themselves as police officers.

Daniel Guilló denies that he took a gun from the police officers and believes that the charges of attempted homicide were fabricated in order to put pressure on him not to make a complaint against the police for ill-treatment (which he subsequently did anyway, on 19 January) or to discredit his version of events if he did so. Daniel Guilló's testimony was corroborated by local residents who were present at the scene, who refer in their statements to the investigating judge to the violent and apparently unmotivated beating he received from the police officers and the lack of aggression on his part. They did not see Daniel Guilló reach for a gun at any time, and a forensic report on the weapon found no fingerprints.

Lack of impartiality, promptness and thoroughness in investigations

Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and ... the investigation of such offences.

Article 15, UN Guidelines on the Role of Prosecutors

Generally, the main obstacle is manifested by the conflict of interest inherent in having the same institutions responsible for the investigation and prosecution of ordinary law-breaking being also responsible for the same functions in respect of law-breaking by members of those very institutions.

E/CN.4/2001/66, para.1310, Report of the Special Rapporteur on torture

The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.

Para 14, Human Rights Committee General Comment 20 on Article 7 of the ICCPR

To be effective, the investigation must also be conducted in a prompt and reasonably expeditious manner.

Para 35, CPT General Report 14 (emphasis in original)