SPAIN
A briefing on human rights concerns in relation to the Basque peace process

INTRODUCTION

In September 1998 the Basque armed group *Euskadi Ta Askatasuna* (ETA), Basque Homeland and Freedom, declared an "indefinite cessation of actions". The unprecedented announcement was made in the Basque Country newspapers *Euskadi Información* and *Deia* and in a video sent to the BBC. It came into force on 18 September, following the signing of the Declaration of Lizarra (Estella) by 23 Basque and other political parties, trade unions and organizations. The parties to the agreement resolved to open unlimited dialogue to resolve the Basque conflict in the "permanent absence of all expressions of violence" relating to the conflict. To date no formal negotiations have yet been opened between ETA and the Spanish government.

Amnesty International believes that respect for human rights is vital for the future peace of Spain and the Basque Country, and that this will need to be based firmly on a resolution of certain human rights concerns that for years have soured relations between the Basque Country and the Spanish authorities. However, human rights cannot be used as bargaining counters by different sides in the process. To be effective, they must be respected unconditionally and applied irrespective of political considerations.

One of the organization's main and longstanding concerns relates to the legislation permitting extended incommunicado detention following arrest, a concern confirmed by the number and consistency of complaints of torture and ill-treatment in such cases which have been studied by Amnesty International as well as other non-governmental and intergovernmental organizations. Other concerns that Amnesty International has brought to the attention of the Spanish authorities and which directly affect the Basque Country, but are clearly not exclusive to it, are those relating to the effective impunity of public officials charged with crimes relating to human rights violations such as torture and ill-treatment and the dispersal of prisoners far from their homes. The organization has also been deeply troubled by the human rights abuses committed over the years by armed opposition and other groups operating outside the law, and it has repeatedly and unreservedly condemned the killings, kidnappings and hostage-takings for which ETA in particular has been responsible.

This briefing does not aim to cover all human rights concerns relating to the Basque Country - some of which also relate to Spain in general - such as the ill-treatment or alleged ill-treatment of persons not suspected of politically-motivated offences. However, it is confident that implementation of the recommendations listed at the end of

the paper would contribute towards laying a foundation on which the peace process can build.

1. Articles of the Code of Criminal Procedure extending the period of incommunicado detention and denying effective legal assistance

The standard maximum time under which a detainee may be held before being released or brought before a judge is 72 hours (Articles 17 of the Constitution and Article 520 of the Code of Criminal Procedure). However, Organic Law 4 of 25 May 1988 introduced into the Code of Criminal Procedure, under Article 520 bis, a provision extending to a total of five days the time certain detainees may be held by law enforcement officers before being freed or brought before a judge. According to Article 520 bis anyone suspected of having committed a crime in the course of involvement with or membership of an armed band, or as individual "terrorists" or "rebels" may be held for up to 72 hours, extendable for another 48 hours. In addition, according to Article 527, a detainee may, during the incommunicado period, have access only to an officially appointed lawyer, who is available subject to special restrictions and who may not, for instance, be present before or after the taking of a statement (see below). In addition, the detainee held incommunicado is not allowed to communicate the fact or place of his/her arrest and detention to relatives or friends.

The request for extension of incommunicado detention and the authorization made for this by the competent judge, must be "substantiated" (*mediante comunicación motivada*). However, in the experience of Amnesty International, the only motive for justifying incommunicado detention in a request is usually a reference to an individual's suspected links with ETA without further elaboration or evidence, and the request is invariably granted automatically. Article 520 bis provides for permanent judicial control during incommunicado detention, in the sense that a judge can at any time request information or personally or by delegation obtain such information on the situation of a detainee at the place where he or she is detained. However, it remains unclear to what extent, or how frequently individual judges avail themselves of this power.

Amnesty International believes it to be beyond question that incommunicado detention facilitates torture and ill-treatment. Its longstanding concern in this matter is shared by a number of intergovernmental organizations. In its report to the Spanish government, published in 1996, on three visits carried out in 1991 and 1994, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) stated: "It is highly undesirable for a detainee to have contact practically exclusively with law enforcement officials for a period of up to five days, especially when the period in question is that during which the risk of ill-treatment is greatest".

As regards legal access, Amnesty International commented in a report to the United Nations Human Rights Committee in 1996, that: "The lawyer may not meet privately with the client on completion of the proceeding in which the lawyer has participated ... the lawyer may also not meet the client before he or she makes his/her statement and the lawyer is obliged to remain silent during the taking of the statement. These limitations on legal assistance at this crucial early stage in the proceedings are prejudicial to detainees and violate detainees' rights guaranteed under Article 14(3)(c)[of the International Covenant on Civil and Political Rights] to have adequate time and facilities for the preparation of their defence and to communicate with counsel in confidence and under Article 14(3)(d) to legal assistance".[1]

The CPT was also particularly concerned that detainees held incommunicado could not consult in private with the officially appointed lawyer either before or after the making of their statements. The CPT commented: "That someone held incommunicado may not appoint a lawyer of his own choice is unexceptionable. However, the fact that the detainee may not consult in private with the 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". It recommended the shortening of the period of incommunicado detention - which it also found to be applied systematically. At the same time it urged that "a person taken into custody by the police or the Civil Guard be granted the right, as from the outset of the period of custody, to consult in private with a lawyer ..."[2]

[1]"*Spain: Comments by Amnesty International on the government's Fourth Periodic Report to the Human Rights Committee"* (AI Index: EUR 41/07/96)

[2]CPT/Inf (96) 9, Part I, paragraphs 48 and 52. These recommendations were reiterated by the CPT in Part II of its report.

In 1996 the Human Rights Committee, in its Concluding Observations on Spain's fourth periodic report on its implementation of the International Covenant on Civil and Political Rights, emphasized that the provisions allowing for incommunicado detention up to five days without a lawyer of choice "are not in conformity with articles 9 and 14 of the Covenant", and urged the abandonment of the use of incommunicado detention. In 1997 the United Nations Committee against Torture (hereafter referred to as the CAT) urged the Spanish government to consider abolition of the provisions allowing for the extension of incommunicado detention and the restrictions on the right of detainees to a lawyer of their choice. The United Nations Special Rapporteur on torture urged in 1995 that incommunicado detention in general be made illegal and that the practice of blindfolding and hooding in general, making it impossible for victims to identify their torturers, be forbiddden. In 1998 the Special Rapporteur recommended that the Spanish government give serious consideration to the possibility of introducing a system of video recording of interrogations. "This", he said, "could help substantially not only to protect prisoners from abuse, but also to protect law enforcement officials from false accusations".[3]

In its third periodic report on its implementation of the UN Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considered by the CAT in June 1997, the Spanish government claimed that: "... torture and ill-treatment in their traditional sense have been practically eradicated" and that: "Complaints regarding gross forms of torture have practically disappeared, a clear sign that such practices are not taking place, except in very isolated cases".

[3] UN documents E/CN.4/1995/34 and E/CN.4/1998/38. As regards the first reference, which is relevant to Spain but not addressed specifically to that country, the Special Rapporteur added: "In exceptional circumstances, under which it is contended that prompt contact with a detainee's lawyer might raise genuine security concerns, and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association. In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours ... All interrogation sessions should be recorded and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings. The practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers. Thus, blindfolding or hooding should be forbidden".

Although Amnesty International accepts that torture is not practised systematically in Spain, it shares the concern of the CAT, as expressed in its Concluding Observations on Spain's third periodic report, that the complaints of acts of torture and ill-treatment it continued to receive are "frequent". Amnesty International remains particularly concerned about the number of serious allegations of torture that originate from Basque detainees who have been held incommunicado. This was a main subject of discussion with representatives of the Spanish government, and with others whom Amnesty International delegates met during a mission to Spain in March 1998. In April 1999 Amnesty International wrote to the Minister of the Interior of the Spanish government to reiterate its concerns about allegations of torture and ill-treatment during incommunicado detention. In its letter the organization included a number of specific and individual allegations of torture and ill-treatment, dating mainly from 1998, by terrorism suspects held incommunicado for between three and five days, either by the *Guardia Civil* or *Policía Nacional.*The allegations made persistent references to: asphyxiation by the placing of a plastic bag over the head ("*la bolsa*"), and to repeated kicks and blows of the hand on the head or testicles. One detainee alleged that he was severely beaten while wrapped in a blanket. Several claimed they had been forced to bend repeatedly up and down. In one case an ETA suspect claimed that electrodes were applied to his penis, stomach and chest. In some cases allegations referred to sexual abuse, such as the placing of a pistol, a stick or fingers in the anus and vagina and to sexual harassment. There were also references to immersion of the head in water ("*la bañera*") and to threats of execution, rape, application of electric shocks, miscarriage or injury to partners and relatives. In several of these cases allegations were supported by medical evidence, particularly with regard to marks or injuries left by beatings, although other allegations are, by their nature, almost impossible to substantiate.[4]

[4]The problems have been well expressed by the CPT, which has commented: "As regards the medical information and findings, it should first of all be pointed out that for many of the types of ill-treatment alleged, it is very difficult to obtain medical evidence of their use. For example, to demonstrate recourse to asphyxiation by the placing of a plastic bag over the head would require performing an arterial gasometry immediately after the event - an unlikely scenario. Similarly, the application of electric shocks will not necessarily leave physical marks, if carried out expertly. Nor will making someone stand for a prolonged period or perform physical exercises leave clearly identifiable traces of such treatment. Even blows to the body may leave only slight marks, difficult to observe and which quickly disappear, especially if inflicted with an open hand". Commenting on the allegations of torture and ill-treatment made to it by detainees the CPT commented: "The CPT is fully aware that persons arrested in relation to terrorist offences may make false allegations with a view, inter alia, to undermining the reputation of law enforcement agencies. Nevertheless, the temptation of considering all such allegations as necessarily forming part of such a strategy must be resisted" [CPT/Inf (96) 9, Part III, 30]. The CPT felt that the allegations made to it by persons arrested in relation to terrorist offences were detailed and largely concordant, while displaying variations which were credible in view of the personal circumstances of the individuals concerned.

Amnesty International believes that the legal safeguards built into the Code of Criminal Procedure, such as permanent judicial control or regular medical checks, are not in themselves sufficient, or effectively enough pursued, to prevent the occurrence of physical and mental abuse of detainees. In its letter Amnesty International pressed for the immediate abrogation of the above articles of the Code of Criminal Procedure and supported the CPT's recommendation that all detainees be allowed effective legal assistance from the outset of their detention.[5]

2. Judicial process and impunity

[5]A considerable reduction in the number of proceedings before the National Court, involving crimes of terrorism, has been reported since the declaration of the cease-fire. However, Amnesty International has continued to receive a number of allegations of torture and ill-treatment since that time.

In recent years Amnesty International has frequently expressed its concern about a number of factors which point to the existence of effective impunity as regards judicial processes connected with human rights violations by law enforcement officers. The organization has argued that "the pattern of nominal sentences for law enforcement officers convicted of torture or ill-treatment, the availability of pardons, lax enforcing of sentences, discrepancies in standards of forensic medical reporting and the perpetuation of incommunicado detention are all contributory factors in the failure to eradicate torture and ill-treatment".[6] In some cases the length of the judicial process is so great that, by the time a trial opens, accused officers may not be tried because the period during which prosecution could be brought has lapsed (*prescripción del delito*).[7] In some cases officers already convicted for a crime of torture, but whose appeals were still pending, have been selected for promotional courses. Where first instance sentences may more appropriately reflect the seriousness of the crime committed, they may be substantially reduced on appeal to non-custodial sentences.

[6]See "*SPAIN: Comments by Amnesty International on the government's Fourth Periodic Report to the Human Rights Committee"* (AI Index: EUR 41/07/96).

[7]For example, in January 1998 the trial opened in Bilbao, 14 years after the crime was committed, of five national police officers accused of torturing two suspected members of a Basque armed group, Iraultza (*Revolution*). Three officers were sentenced to a total of five months' detention suspended for two years and eight months for the torture of José Ramón Quintana and José Pedro Otero. However, two other officers could not be tried because more than five years had elapsed between the crime and the opening of proceedings, and these were not therefore in time. More recently, in April 1999, the public prosecutor requested a stay and closure of proceedings in the case of the alleged illegal detention and torture, in January 1990, of a GRAPO member, Cela Seoane, by Civil Guard officers in Corunna. In June 1990 the proceedings were stayed because the officers had not been identified, but the case was reopened in June 1996. The lawyer of Cela Seoane is reportedly contesting the request for *prescripción*.

In April 1996 the UN Human Rights Committee expressed concern: "at the numerous reports it has received of ill-treatment and even torture inflicted on persons suspected of acts of terrorism by members of the security forces. It notes with concern, in that regard, that investigations are not always systematically carried out by the public authorities and that when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released". The Committee recommended that the State party "establish transparent and equitable procedures for conducting independent investigations into complaints of ill-treatment and torture involving the security forces and urged it "to bring to court and prosecute officials who are found to have committed such deeds and to punish them appropriately". In 1997 the CAT stated 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. The CAT added: "The sentences imposed on public officials accused of acts of torture, which frequently involve token penalties not even entailing a period of imprisonment, seem to indicate a degree of indulgence which deprives the criminal penalty of the deterrent and exemplary effect that it should have and is also an obstacle to the genuine elimination of the practice of torture".[8]

Amnesty International has welcomed the introduction of articles in the new Penal Code, introduced on 24 May 1996, which specifically prohibit torture and ill-treatment,

[8]The case of Kepa Urra Guridi provides an illustration of Amnesty International's concern in this area. Although not an example of total impunity, it does reflect the continuing "degree of indulgence" on the part of the authorities to which the CAT alludes. In November 1997 the Provincial Court of Vizcaya sentenced three Civil Guards to four years, two months and one day's imprisonment and six years' disqualification from public office for the illegal detention and torture of ETA member Kepa Urra in January 1992. The Civil Guards had been charged under Article 204 bis, in relation with Article 420, of the former Penal Code. Controversially, however, the court considered that, although Kepa Urra had been tortured, the many injuries he had sustained during his illegal detention, when he had been taken to a deserted area, stripped, dragged along the ground and beaten with a non-identified object, while also being questioned, had required first aid rather than medical treatment and that, therefore, Article 420 of the then Penal Code (relating to injuries requiring medical treatment or surgery as distinct from first aid) was not directly applicable. Both public prosecutor and defence then appealed to the Supreme Court against the four-year prison sentence and six-year disqualification on the grounds that the punishment was disproportionate with the deed. The public prosecutor argued that, in view of the court judgment, this should be punished as an offence (*falta*) rather than a crime (*delito*). In October 1998 the Supreme Court reduced the sentences against the officers from four years' imprisonment to a non-custodial one year's imprisonment, while maintaining the six years' disqualification from public service. The court argued that, although torture had indeed occurred, involving a "ferocious attack on the moral integrity and fundamental rights" of the victim, a one-year non-custodial sentence was more appropriate to the "offence" committed because it had not been proved that Kepa Urra had required medical treatment as a direct result of his injuries. Before delivery of this verdict, one of the convicted officers was selected for a promotional course, involving promotion from sergeant to lieutenant. The Spanish government reportedly stated that, while it acknowledged the gravity of the crime there was nothing it could do to prevent the promotion of the convicted officer while the conviction was not definitively confirmed.

increase the scope of the laws punishing such acts and extend penalties for those found guilty of them. However, the organization has stated that the increased scope of the prohibitions and extended penalties are unlikely to be sufficient on their own to end or to significantly reduce torture or ill-treatment. (It should also be pointed out that in many cases that still come before the Spanish courts the crimes or offences took place at a time when the former penal code was still in force. This allows for continuing application of the former penal code).

Trials of the Grupos Antiterroristas de Liberación (GAL)

Judicial inquiries have continued for years into the "dirty war" waged by the GAL against ETA during the 1980s. The GAL included officers of the security forces and hired gunmen and was reportedly linked with the highest levels of the former Spanish administration. In July 1998 former Interior Minister José Barrionuevo and former Secretary of State Security Rafael Vera were sentenced by the Supreme Court to 10 years' imprisonment for illegal detention and misappropriation of funds in connection with the kidnapping of French businessman Segundo Marey in 1983. The trial was the first to be held in connection with the "dirty war". Ten other defendants were sentenced to terms of imprisonment ranging from 10 years to two years, four months and a day. In December, however, on the recommendation of the Supreme Court, the Council of Ministers granted 10 of the 12 convicted, including José Barrionuevo and Rafael Vera, a partial pardon of two-thirds of their sentences. The remaining parts of the sentences were subsequently suspended by the Constitutional Court pending consideration of their appeals to the court. The prisoners were released but remained barred from public office.

In March 1999 the National Court (*Audiencia Nacional*) issued a committal for trial order for kidnapping, infliction of bodily harm (*lesiones*) and murder in respect of two ETA members, José Antonio Lasa and José Ignacio Zabala, who had been abducted in 1983 from Bayonne, France and whose tortured bodies were discovered near Alicante, in southern Spain in March 1995 (see *Amnesty International Report 1997* and *Amnesty International Concerns in Europe: July-December 1996*, AI Index: EUR 01/01/97). The seven alleged GAL members accused include a former senior government official, a general of the *Guardia Civil* and a former civil governor of Guipúzcoa, as well as various members of the security forces. The trial was expected to take place in June 1999, almost 16 years after the crimes were committed, and the public prosecutor requested sentences totalling, in some cases, 92 years' imprisonment on charges of belonging to an armed band, illegal detention, murder and infliction of bodily harm.[9] However, as late as April

[9]The term "*torturas*" is not used by the prosecutor because, under Article 204 bis of the Penal Code, applicable at the moment of the crimes, "torture" requires that infliction of injury be committed within the framework of an official investigation. This was not the case with the kidnapping, torture and murder of José Antonio Lasa and José Ignacio Zabala.

1999 it was reported that one of the accused had presented to the National Court up to six preliminary points (*cuestiones previas*) requiring resolution before the opening of the trial, including arguments relating to the competence of the National Court to judge the case. This move, reportedly opposed by the public prosecutor, may, if granted, involve yet a further delay of one year before the trial can be held.

Other continuing GAL-related judicial inquiries relate to the killing of a suspected ETA member Ramón Oñederra (1983), and that of Ángel Gurmindo and Vicente Perurena (1984); the killing of Santiago Brouard, a leading member of the Basque nationalist coalition party Herri Batasuna (1984); the attack on the "Monbar" (1985) in Bayonne, France, resulting in the deaths of four suspected ETA members, José María Echániz, Agustín Irazustabarrena, Ignacio Astiauninzarra and José Sabino Echaide, and the killing of Juan Carlos García Goena (1987). Other pending cases include the killings of the brothers Mikel and Rafael Goikoetxea (1983 and 1984), the killing of Robert Capplane in Biarritz (1985) and the killings of ETA members Mikel Zabaltza and Lucía Urigoitia (1985 and 1987).

Amnesty International is closely monitoring the judicial inquiries and trials related to the alleged GAL crimes because of its longstanding concern about effective impunity in Spain. In an general oral statement about impunity, made in August 1991 to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Amnesty International observed that: "... bringing the perpetrators to justice is not only important in respect of the individual case, but also sends a clear message that violations of human rights will not be tolerated and that those who commit such acts will be held fully accountable. When investigations are not pursued and the perpetrators are not held to account, a self-perpetuating cycle of violence is set in motion resulting in continuing violations of human rights cloaked by impunity" The organization added: "... those responsible for human rights violations must be brought to justice whether they are officials of a past or current government and regardless of whether they are members of the security forces or unofficial paramilitary groups. Alleged perpetrators should be brought to trial and such trials should conclude with a clear verdict of guilt or innocence. Although Amnesty International takes no position on the nature of the sentence, the systematic imposition of penalties that bear little relationship to the seriousness of the offences brings the judicial process into disrepute and does not serve to deter further violations".

In the same statement the organization stated that, although it "takes no position regarding the granting of post-conviction pardons once the truth is known and the judicial process has been completed", it warns against the introduction of amnesty laws or other measures which have the effect of preventing the truth and subsequent accountability before the law. In specific connection with the judicial processes relating to the GAL, Amnesty International has urged the government and judicial authorities to ensure that no

legal or other measures are taken which would, in practice, mean that suspected perpetrators are not effectively tried in accordance with international norms. It additionally urges that everything possible be done to bring to trial those who continue to elude justice, such as the kidnappers and torturers of protected witness "1964/S", whose abduction and torture in 1996 greatly heightened Amnesty International's concern for his safety and the safety of others involved in the ongoing investigations into the human rights violations committed by the GAL.[10]

Trials of suspected members of ETA or other armed groups

It should be made clear that the comments made above in connection with the GAL trials should also apply to the trials of those suspected of crimes relating to ETA and other armed groups which have been responsible for serious human rights abuses.

Compensation to victims of human rights violations and abuses

[10] "1964/S", a former Naval intelligence officer, is a witness in the investigation nto the Lasa/Zabala case. In November 1996 "1964/S" was abducted and tortured after giving evidence to the investigating judge, reportedly implicating Civil Guard members. He was reportedly taken to a beach near San Fernando (Cádiz), burned with cigarettes and sodomized with a blunt instrument, and a copy of the judge's order requesting that he be given protection was forced into his mouth. Medical reports recorded 22 cigarette burns and anal injuries. The Minister of the Interior recognized that the events were "a collective failure of the state of law". (See *Amnesty International Urgent Action "Protected witness '1964/S' and other witnesses involved in official investigation into past human rights violations*", AI Index: EUR 41/11/96, *Amnesty International Report 1997* and *Amnesty International Concerns: July-December 1996*, AI Index: EUR 01/01/97). Amnesty International is seriously concerned that, despite this, there has reportedly been no arrest and that no police investigation is currently under way to discover the perpetrators of the crime. Other witnesses in GAL investigations have also complained that they have not been given effective protection.

According to a Spanish government representative speaking in February 1999: "The Government is determined that the victims of terrorism should take priority in the peace process". The same month the Spanish government issued a white paper (*proposición de ley*) setting out the general principles of a future regulation of compensation awards to the "victims of acts of terrorism or acts perpetrated by the members of armed bands" who have suffered physical, or physical and mental injury resulting in death or serious, permanent or semi-permanent incapacity.[11] According to current plans, the acts of terrorism would include those perpetrated by groups such as the GAL, ETA and the *Grupos de Resistencia Antifascista Primero de Octubre* (GRAPO) between 1 January 1968 and the date at which the law enters into force with its publication in the *Boletín Oficial del Estado*. Sums of compensation would be awarded according to a fixed scale, independently of judicial decision. For example, any court award that was lower than that fixed by the law, would be made up by the state, which would pay the full award in the absence of a judicial decision.

While unable to comment on the specific sum that should be awarded in any particular case, Amnesty International welcomes the Spanish government's initiative "in solidarity with the victims of acts of terrorism or acts perpetrated by members of armed bands" and urges the authorities to ensure that these victims are promptly, fairly and adequately compensated. However, the organization believes that it is important to reiterate that, as a matter of principle, *all* victims of human rights violations committed by agents of the state, or by individuals acting with the state's consent, have the right not only to the truth, but to adequate and fair reparation, compensation and rehabilitation.

[11] "*Proyecto-Proposición de ley sobre solidaridad con las víctimas de actos terroristas o de hechos perpetrados por personas integradas en bandas armadas*"

The right to redress, compensation and rehabilitation is enshrined in international as well as Spanish law. Article 14 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible". The Human Rights Committee has also concluded that: "States must ensure an effective protection through some machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation".[12] The right to restitution, reparation and compensation for physical and mental injury is recognized by the Spanish Penal Code, Article 121 of which recognizes the responsibility of the state, autonomous community or other governmental entity in providing compensation on behalf of state agents convicted of deliberate crimes or crimes arising from neglect, recklessness or imprudence (*delitos dolosos o colposos*).

Despite these provisions, however, sums of compensation awarded by the Spanish courts to victims of torture and ill-treatment have been relatively small, and the effective impunity that continues to cause concern to Amnesty International, as well as to other non-governmental and intergovernmental organizations, means that compensation may not be awarded at all. Amnesty International therefore recommends that, in a separate measure from that proposed in solidarity with the victims of terrorism, the Spanish authorities undertake to review all cases from 1968 where there have been definitive convictions of public officials for torture or serious injury and ill-treatment - but which are not covered by the present proposals - with a view to ensuring that there has been redress and fair and adequate compensation in respect of each of the torture victims and/or their families and heirs, and to ensuring also that future convictions reflect the deep seriousness with which the crime of torture should be treated.

3. Prisoner transfers and prisoner "acercamiento"

In November 1998 the Congress of Deputies unanimously approved a motion urging the Spanish government to develop a "new, consensual, dynamic and flexible direction in prison policy with a particular view to ending violence". It was generally understood that this would involve revision of a prison policy which, over the last few years, has favoured "dispersal" of Basque prisoners to prisons throughout the Spanish peninsula, the Canary and Balearic Islands and the Spanish North African enclaves of Ceuta and Melilla.

[12] Report of the Human Rights Committee, *GAOR*, 37th Session, Supplement No. 40 (1982)

At present over 500 Basque prisoners are held in Spain, of whom over 100 are in preventive detention (on remand). In past months the Spanish government has agreed to the transfer of a number of individual prisoners either to the Spanish mainland or to prisons in the Basque Country, often for health-related reasons. The first transfer of Basque prisoners to the Basque Country since the proclamation of the cease-fire took place in October 1998, involving four prisoners who had requested medical treatment closer to their home environment. An additional 21 Basque prisoners had, by the end of December, been transferred from the Canary and Balearic islands and from Ceuta and Melilla to the mainland. Further staged transfers of prisoners to prisons in the Basque Country are reportedly being planned.

During the Amnesty International mission to Spain in March 1998 the organization stated that its views on the "*acercamiento*" of prisoners were based on international standards and recommendations. The UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (Principle 20) provides that: "If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence". The CPT, during its visits to Spain in 1994, observed that: "many prisoners were serving their sentences in establishments situated a long way from their families' homes" and recommended that: "Humanitarian considerations, not to mention the objective of social rehabilitation, speak in favour of prisoners serving their sentences in the region where they have family and social ties" [CPT/Inf (96) 9, paragraph 143].

Amnesty International welcomes the moves so far taken by the Spanish authorities to transfer individual prisoners closer to their homes, usually for reasons of health. At the same time the organization hopes that the authorities will take into account the recommendations of the CPT, as well as the provisions of the Body of Principles and that "*acercamiento*" of prisoners becomes a key part of prison policy. However, the organization wishes to stress that *all* prisoners - whether political or non-political, Basque or non-Basque - should be the object of this policy where at all possible, and always so long as the individual prisoner requests it.

4. Abuses by ETA and other armed groups

Throughout past years Amnesty International has repeatedly and unreservedly condemned
human rights abuses committed by ETA and other armed groups. Since the 1960s ETA has killed over 750 people in Spain and committed serious human rights abuses against others, including hostage-taking. In the months leading up to the declaration of the indefinite cease-fire the group deliberately targeted political representatives, particularly councillors and allies of the ruling Popular Party (PP). In June 1998 PP councillor Manuel Zamarreño was killed after the explosion of a device next to his car in the Basque

town of Rentería (Guipúzcoa). He was the fifth PP councillor to be murdered by ETA since the kidnapping and killing of Migel Ángel Blanco in July 1997. His predecessor, José Luis Caso, was shot in the head by ETA members in a bar in Irún (Guipúzcoa) in December 1997. Tomás Caballero, PP councillor for Pamplona (Navarra), was killed there by ETA in May 1998; PP councillor Alberto Jiménez Beceril and his wife, Asunción García Ortíz, were shot dead in Seville in January 1998 and PP councillor José Ignacio Iruretagoyena was killed in Zarauz (Guipúzcoa), also in January.

On each of these occasions Amnesty International reiterated its unreserved condemnation of the human rights abuses committed by ETA, stating that the Basque armed group flouted humanitarian principles and the dictates of public conscience in no less abominable a way than human rights violations committed by governments when they carry out torture, "disappearances" and extrajudicial executions.

While welcoming the halt to the killings, hostage-takings and other human rights abuses that has followed the cease-fire initiative announced by ETA in September 1998, Amnesty International is concerned that the acts of urban violence in the three provinces of the Basque Country and Navarre that have marred the peace process since that time, and which have generally been ascribed to radical nationalist youth groups linked to ETA, such as *Jarrai,* could lead to a continuation of human rights abuses. Often referred to by the Basque phrase *kale borroka*, this "low intensity terrorism" has predominantly taken the form of arson and petrol bomb attacks against - or bombings of - the homes or offices of councillors of political parties such as the ruling *Partido Popular* (PP) or main opposition *Partido Socialista Obrero Español* (PSOE) and others. Death threats have also been made against a wide range of persons, including political representatives, journalists, judicial figures and law enforcement officers. In addition, ETA has reportedly continued to send letters to companies reiterating demands for a "revolutionary tax".

Amnesty International hopes that a complete cessation of violence by ETA and other groups will contribute significantly towards the creation of a climate of respect for basic human rights in the Basque Country. It therefore calls upon ETA, *Jarrai*, and other groups reportedly involved in the *kale borroka* campaign, to end all action that could endanger or threaten life, liberty and security of person. It furthermore calls upon ETA to put a definitive and immediate end to its campaign of killings, kidnappings, hostage-takings and other human rights abuses, indefinitely halted in September 1998 , and to work towards the creation of a climate in which the right to life, liberty and security of person and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment are respected on all sides.

RECOMMENDATIONS

As stated above, Amnesty International believes that respect for human rights is vital for the peace of Spain and the Basque Country and that all parties concerned in the peace process, either directly or indirectly, should move unilaterally to respect and implement those rights, without waiting for others to do so.

Bearing in mind the points raised by this briefing paper about its concerns with regard to the Basque peace process, Amnesty International urges the Spanish authorities to:

Incommunicado detention

- immediately abrogate Article 520 bis of the Code of Criminal Procedure (CCP), extending the period of incommunicado detention under which terrorism suspects can be held and Article 527 of the CCP, which allows a detainee access only to an officially appointed lawyer, subject to special restrictions;

- take steps to prevent the virtually systematic application of incommunicado detention with a view to implementing the recommendation of the Human Rights Committee in 1996 that use of incommunicado detention be abandoned;

- in view of consistent and longstanding allegations by detainees held incommunicado that they are hooded and/or blindfolded by the law enforcement officers detaining them, and bearing in mind the general recommendation of the UN Special Rapporteur on torture that the practice of hooding and blindfolding of detainees be forbidden, take steps to ensure that detainees are not hooded or blindfolded. (This measure should also apply to the regular wearing of masks by officers in confrontation situations in public, so that they cannot be identified)[13];

- in accordance with the recommendation made to the Spanish government by the UN Special Rapporteur on torture in 1998, seriously 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.

Impunity

- ensure that the long-delayed and continuing judicial processes involving the GAL - the majority of which have been pending since the 1980s - are completed as

[13]See "Spain: Comments by Amnesty Internatinal on the government's Fourth Periodic Report" for further details about this practice.

soon as possible and that (despite the fact that the crimes will be tried under the former penal code, which carries more limited scope for the punishment of torture and ill-treatment than the new code introduced in 1996) the trials conclude with a clear verdict of guilt or innocence. Ensure also that the sentences are commensurate with the gravity of the crimes committed, without any suggestion of impunity. This recommendation also applies to those tried in connection with crimes committed by ETA or other armed groups;

· ensure that no legal or other measures are taken with regard to the GAL suspects, any more than to those suspected of crimes relating to ETA and other armed groups, which would, in practice, mean that suspected perpetrators are not effectively tried in accordance with international norms and that everything possible be done to ensure that those who continue to elude justice are brought to trial;

· ensure that current plans to compensate the victims of "terrorist acts or acts perpetrated by members of armed bands" are promptly, fairly and adequately implemented;

· take steps to ensure that the right, under international law, of all victims of human rights violations or their dependents, to obtain redress and fair and adequate compensation, is upheld. In particular, take steps to review all cases from 1968 where there have been definitive convictions of public officials for torture or serious injury and ill-treatment, with a view to ensuring that there has been redress and fair and adequate compensation in respect of each of the torture victims and their families and heirs, and that they are treated on an equal footing with the victims of human rights abuses;

"Acercamiento" of prisoners

· comprehensively revise and reverse the longstanding practice of dispersal of certain groups of prisoners throughout the Spanish peninsula, islands and Ceuta and Melilla with a view to allowing *all* prisoners, wherever possible, and so long as the individual requests it, to serve their sentences in the region where they have family and social ties.

At the same time Amnesty International calls upon ETA and/or other groups to:

· put an immediate and definitive end to the human rights abuses such as killings, kidnappings and hostage-takings, which Amnesty International has repeatedly and unreservedly condemned, in order to help to bring about a climate in which fundamental human rights such as the right to life, liberty and security of person

and the right not to be subjected to torture or to cruel, inhuman or degrading treatmeant or punishment are respected;

· put an immediate end to the numerous violent and intimidatory acts, such as bombings and death threats, which have been made against political representatives, companies, newspapers, judicial figures, law enforcement officers and others since the declaration by ETA of an indefinite cease-fire.