



SPAIN: THE RIGHT TO PROTEST UNDER THREAT

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First published in 2014 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

© Amnesty International 2014

Index: EUR 41/001/2014 English
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

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Cover photo: A demonstrator is restrained by Spanish National Police officers outside the Spanish parliament in Madrid, 25 September 2012
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1. INTRODUCTION

“Two policemen in civilian clothes pushed me against a wall and threw me to the ground; they brought me outside and identified themselves as police, they told me I was under arrest because I tried to attack the Councillor of Health. If it wasn't for the footage, I would be in serious trouble. (...) The policeman knows that due to his false accusations a person will spend a day in a cell and that he will never be held responsible for this. Being arrested is a very negative experience. I am glad there were video recordings of what really happened, no one likes to be arrested, you're so frightened, your bosses will think you assaulted the Councillor, your friends will think you attacked someone. It makes you afraid, and so you become more careful; my friends and my lawyer have advised me not to go to “*escraches*” and not to be in the front line during evictions.”

Jorge, 35 years of age, is a healthcare assistant in a health centre in Madrid. He is an active member of Marea Blanca¹ and also belongs to the 15M Carabanchel Popular Assembly.² He has also been involved in actions organized by a group called STOP Evictions³ in his neighbourhood. On 25 March 2013, during a protest in support of the public health system, which took place on the occasion of a visit by the Councillor of Health of the Autonomous Community of Madrid to a privately-run public hospital, Jorge was arrested and accused of attempting to assault the Councillor. According to Jorge, he was in the hospital hallway along with other people shouting slogans against the privatisation of the health system when two people pushed him against a column, threw him to the ground and jumped on him. They subsequently identified themselves as police officers who told him he was being arrested for attempting to assault the Councillor. Jorge was then transferred to the police station of Móstoles. The next morning he was brought before a judge, where he denied the charge of attacking the Councillor and was released pending further proceedings.

On 17 June, the examining judge dismissed the case against him, as “(...) after seeing the images provided to the court by Spanish National Television, the version put forward by the police officers making the charge was not credible.⁴ Indeed, unbroadcasted footage filmed inside the hospital by a Spanish TV channel shows that Jorge shouted slogans while standing several metres away from the Councillor, never trying to attack or get close to him. However, accusations against Jorge were widely reported in the media, including some reports accusing him of trying to assault the Councillor and giving information about his identity, including his name (or in some cases initials of his surname) and the neighbourhood where he lives.

It was not the first time that Jorge faced criminal proceedings for exercising his right to freedom of peaceful assembly. On 25 March 2012, he and some friends went to the Atocha neighbourhood of Madrid in order to participate in a demonstration taking place there at midday, to protest against what they considered to be injustices related to the right to housing. They were carrying two rolled up banners. While they were waiting for other people to join them, as they had arrived before the rally started, Jorge was stopped by police officers for an identity check. This was at 11.50 am, as noted in a police report he was later provided with. According to Jorge, the officers asked him to unroll the banners and they noted down the text of these in a notebook. The officers did not give any reason for the identity check. A few minutes later, Jorge received an unrelated call from the police telling him he should go home because a small fire had been started in his doorway. He immediately returned home and, after talking to the police officers there, he went to the police station to file a complaint about the fire, apparently deliberately started by unknown persons.

Two months later, on 11 May 2012, he received a letter from the Government Delegate’s Office in Madrid regarding a decision to commence proceedings for an administrative infringement related to the gathering on 25 March. It stated that he would be fined for disobeying orders of the police,⁵ because, instead of dispersing when told that the protest had not been notified in advance to the authorities,⁶ he remained at the gathering, which lasted until 13.00 hours. Jorge made representations in which he explained that it was impossible that he could have acted in this way, showing proof that at that time he was at the police station reporting the fire at his house. On 28 January 2013, he received a letter from the Government Delegate’s Office informing him that the proceedings had been archived as they had lapsed. However, there was no comment on the merits of the case, or that he had been the subject of an incorrect accusation by the police.⁷

On 27 December 2012, Jorge was penalised for participating in an unnotified gathering to prevent an eviction in calle Aleixandre in Madrid on 27 June 2012. He was fined 301 euros for causing serious public disorder in a public place or causing damage.⁸ According to Jorge’s statement made to Amnesty International and a video recording of the protest viewed by the organization,⁹ the protesters simply remained at the entrance of the apartment building until the police officers appeared, who pushed them around and moved them from the doorway. Police officers pushed the protesters several metres along the pavement, at which point Jorge explained to police officers what the protesters were doing, without taking any aggressive action or raising his voice; the group remained there until the bailiffs had left.

The case of Jorge is far from unique. Amnesty International has received dozens of reports in the past years and months, pointing to increased restrictions, including through the use of fines, imposed by Spanish authorities on individuals participating in peaceful

demonstrations.

The economic and financial crisis that has affected many countries, particularly in Europe, began to be felt in Spain in 2008. The continual loss of jobs and high unemployment among the population,¹⁰ the austerity measures and cuts in basic social services,¹¹ alongside a perceived lack of transparency on the part of public officials in adopting these measures, have led thousands of people to take to the streets in protest in recent years. According to data provided by the Government, in 2012 there were more than 14,700 demonstrations throughout Spain.¹² According to the Delegate's Office in Madrid,¹³ in that city alone there were 3,419 demonstrations during 2012; in 2013 the figure stood at 4,354. In Barcelona, there were 3,287 demonstrations in 2012, and in the first six months of 2013 – as of 20 June – there were 1,918.¹⁴

Most of these events have been peaceful, although at a few events specific groups or individual demonstrators have been involved in violent incidents. Despite the peaceful nature of the majority of these protests, however, there have been frequent allegations of excessive use of force and ill-treatment by members of the law enforcement bodies responsible for policing them, and a lack of proper internal and judicial investigation of complaints made. There have also been reports of aggressive conduct by police towards journalists and photographers covering demonstrations, sometimes involving the destruction of their equipment and their arrest.

In recent months, there have been reports of mass identity checks of peaceful protesters carried out by police officers during or even before demonstrations, and there have also been reports of an increase in administrative fines imposed on people attending protests or similar assemblies. Many people who face financial constraints as a result of the general economic and financial situation are unable to pay the fines. Amnesty International has found clear indications that the penalties imposed on participants in protest actions may be having a dissuasive effect, deterring individuals from taking part in public protests and exercising their right to freedom of peaceful assembly.

There have also been repeated statements by public authorities with regard to the purported need to place further restrictions on the holding of demonstrations, including by amending relevant legislation. In 2013, the government started a procedure to amend the Criminal Code and the Law on the Protection of Public Safety. Both texts have a direct impact on the exercise of the right of freedom of expression and assembly.

This report sets out Amnesty International's concerns about restrictions put on the right to freedom of expression and of peaceful assembly in the context of demonstrations in the past few years. It also covers some findings by the organization with regard to the use of force by police in this context, and concludes that the police have used excessive force in many cases, including inappropriate use and misuse of anti-riot gear, and when carrying out arrests; it also documents some cases of ill-treatment of detainees in police custody, as well as concerns with regard to inadequate investigation by the authorities of such human rights violations by law enforcement officials. Amnesty International has long expressed concerns regarding excessive use of force by police officers in Spain, and the failure of the authorities to ensure that this, as well as torture and other ill-treatment by police, are thoroughly and effectively investigated.¹⁵ Many of the cases considered in this report indicate that this

failure persists.

By the use of certain provisions of Spanish legislation relating to holding assemblies and the widespread imposition of fines on individuals participating in public protests, the Spanish authorities have restricted the enjoyment of human rights in Spain, in particular the rights to freedom of peaceful assembly and association and freedom of expression, in a way which is inconsistent with international human rights standards and with Spain's obligations under international law.

2. CONTEXT: THE RISE OF SOCIAL MOVEMENTS AND THE RESPONSE OF THE SPANISH AUTHORITIES

The human rights violations documented by Amnesty International in this report are not occurring in a vacuum. They are taking place in a country that is facing a deep economic crisis, high unemployment and where measures adopted by both the central and autonomous regional governments have resulted in cuts to basic services, including health and education, that have affected most people in Spain. This has led to an increasingly organized public response, in the form of protests as well as resistance by the groups affected by decisions which they consider to be in violation of their rights. In some cases these groups of citizens have submitted alternatives to the government's initiatives by means of popular legislative initiatives (Iniciativa de Legislación Popular, ILP).

For the last three years, most of the protests and rallies in Spain have been led by social movements. One of the most influential, known as 15M,¹⁶ emerged as a social movement after a demonstration organized on 15 May 2011, following the local and autonomous regional elections of May 2011. It was a group of people who were organizing via online social networks and spontaneously decided to camp out in the Puerta del Sol Square in Madrid. They were calling for a more participatory democracy and a move away from the traditional bi-party system.

15M soon spread across the whole of Spain, giving rise to a series of rallies, protests and encampments in different squares around the country, the largest being in Puerta del Sol in Madrid, and in Catalonia Square (Plaça de Catalunya/Plaza de Cataluña), Barcelona. At present, the 15M movement has some form of presence in 58 Spanish towns.

Another prominent group within the network of social movements is the Platform for those Affected by the Mortgage Crisis (PAM),¹⁷ which emerged in Barcelona during 2009 and now has a presence right across Spain. PAM is registered in the Ministry of the Interior's National Register of Associations. PAM brings together people who are having difficulty paying their mortgage or who are in a foreclosure process, along with people who support their cause.

After a popular initiative seeking to amend Spain's Mortgage Law was adopted in a watered down form in November 2012, PAM began a series of protest actions aimed directly at the politicians and majority party members, calling on them to represent the interests of people affected by mortgage foreclosures. Although these actions, known as *escraches* ("doorstep demonstrations"), which take place outside the offices of the Popular Party or near the homes of its politicians, have been peaceful in nature, they provoked a furious response on the part of the Popular Party and several government representatives.

There are other social movements related to the 15M movement which also oppose the government's austerity measures and cuts, such as, for example, the White Tide (Marea Blanca) against cuts in the public health system, and the Green Tide (Marea Verde) against public education cuts. Under the umbrella of the 15M movement, some other Platforms also have organized demonstrations and rallies, such as, for example, the Stand Up Platform (Plataforma En Pie), and the 25S Coordinating Body, which is a group of people who in August 2012 convened through online social networks calling for a massive demonstration to be held in Madrid on 25 September 2012, in front of the Congress, with the purpose of directly addressing deputies with their protest.

Other social movements have actively and peacefully challenged and denounced discriminatory practices by the police. For example the Neighbourhood Brigades for the Observation of Human Rights (Brigadas Vecinales de Observación de Derechos Humanos – BVODH) are groups of neighbours in Madrid who observe, document and denounce identity checks targeting people belonging to ethnic minorities, inform these and other local people of their rights and give information about other organizations that can offer advice. The Neighbourhood Brigades was set up by residents of particular neighbourhoods in reaction to the constant stop and checks by police in their area which, in their opinion, were restricting certain people's use of the public space because of their ethnic profile, and racially discriminating against those perceived to be migrants. After receiving training, team members wear orange jackets with the words "Neighbourhood Brigades for Human Rights Observation" and "Observing the Observers" on them, and stand in small groups in squares, streets or outside metro stations, taking notes about the police operations they witness.

The authorities' response to the mobilization generated by such movements has been characterised by the unnecessary or excessive use of force during demonstrations, the fining of organisers and participants¹⁸ and legislative proposals imposing additional restrictions of the freedom of assembly. The stigmatisation of the social movements behind the protests has also been a feature of the ruling Partido Popular's rhetoric on this issue. For example, the Government Delegate in Madrid, in response to a question by media shortly after the second anniversary of the 15M Movement, said that "15M has been a very important movement in our political and social life" but that (...) "it has been undergoing a transformation" to become "more radical thus losing public support".¹⁹

In a local radio programme, a Popular Party councillor and spokesperson from the Council of Logroño, a city of northern Spain, defended new restrictions on attending council meetings for the general public by referring to groups that had been "targeting" the Popular Party since 11 June and their strategy of violence.²⁰ In response to this accusation, the 15M launched a video on YouTube showing the peaceful nature of their demonstration, with demonstrators of all ages, including children.²¹

In a report presenting an Integral Plan 2012-2015 for improving coexistence in Lavapiés,²² a large neighbourhood in Madrid with a high immigrant population, the authorities explained that the increased police activity in the district is a consequence of incidents organized by so-called "anti-systemic" groups.²³ The report states the authorities' concern at the attempts to discredit police actions promoted by the 15M movement, in which "groups of young people, closely linked to anti-systemic groups of all kinds, want to turn Lavapiés into a reference point for their protest, with all this entails".²⁴ This report also refers to "anti-

systemic groups” hindering “police operations targeting drugs trafficking carried out by black people, dressing it up as repression of immigrants”,²⁵ in a clear allusion to the activity developed by the BVODH.

In Gandia (Valencia region), the Mayor reportedly stated that the PAM were “copying Nazi methods” when 50 platform members peacefully demonstrated outside the offices of the Popular Party in that area to request support for the Popular Legislative Initiative on evictions. The Mayor appeared before the media and stated: “When I saw they were going to do an *escrache*, having seen everything they’ve done to the politicians, I thought that’s not going to happen here. We won’t let them threaten us. *Escraches* are methods used by dictators, these methods were used by the Nazis to target the Jews.”²⁶

Of particular concern was the statement by the Government Delegate in Madrid who referred to PAM’s spokesperson, Ada Colau,²⁷ personally, linking her to “pro-ETA” groups and accusing her of having supported such groups. It compared the Platform’s protest actions to street fighting (*kale borroka*). “It’s not a group supporting people who have been evicted but rather one that is following a radical political strategy”.²⁸ The Minister for the Presidency and Justice, and spokesperson for the Rioja government, tweeted the following on 4 April 2013: “Nazis, communists, Francoists....Now...Ada Colau”.²⁹

When asked about the PAM’s protest, the President of the Madrid Autonomous Government told the media that he hoped that “the law enforcement bodies [would] act robustly in these cases”. The President of the Autonomous Community of Castilla La Mancha and General Secretary of the Popular Party also stated that “nothing is gained by harassment” and that this form of protest was “pure Nazism”.³⁰

In Catalonia, the president of the Sant Cugat Popular Party’s Youth Wing, who is also a member of the party’s leadership team in Catalonia, tweeted on 6 May 2013: “Until the PAM breaks its links with radical groups and pro-ETA parties, its message will lack the validity it is seeking. They are taking the wrong path...”³¹

The repeated expression of such views has provided the driving narrative for legislative proposals put forward by the ruling Partido Popular to restrict the right to freedom of expression and peaceful assembly.

3. ABOUT THIS REPORT

The research for this report was conducted primarily during 2013. Since 2011, however, Amnesty International has been continually monitoring the public authorities' response and the actions of the law enforcement bodies in the context of demonstrations, by collecting verbal statements from those who were present at demonstrations, as well as viewing videos and photos provided by such individuals or available on the Internet. Some of the cases described in this report, such as the excessive use of force by police during the forcible dispersal of demonstrators from Catalonia Square in May 2011, have already been included in previous AI publications.³²

In carrying out the research for this report Amnesty International interviewed around 30 victims and their relatives, journalists, lawyers, and representatives of human rights organizations as well as representatives of some of the NGOs and social movements mentioned in this report. Some of the people who feature in this report asked not to be identified by their own name. In these cases the report uses an assumed name, as indicated in the text.

In many instances, in communications with Amnesty International, representatives of law enforcement bodies have denied the allegations of ill-treatment. In some instances protestors are appealing against administrative penalties which have been imposed on them. These and some of the other cases documented in this report are yet to be resolved. Where possible, Amnesty International continues to monitor these cases.

The report reflects information which, during the course of its research, Amnesty International obtained from meetings and communications with government authorities and political representatives of parliamentary groups, as well as representatives of the Ombudsman. The report also reflects relevant interventions by Ministry of the Interior officials before the Spanish Congress. The organization also interviewed a representative of the main police union, Sindicato Unificado de Policía (SUP).

Amnesty International has approached the state and autonomous regional authorities in Catalonia,³³ in the Basque Country,³⁴ and in the central government on a number of occasions in recent years in relation to allegations about excessive use of force by law enforcement officials. Apart from the exception mentioned below, the organization has to date received no responses from the national authorities to the concerns it has raised.

Following police actions during a demonstration on 25 September 2012, Amnesty International addressed three letters to the Minister of Interior calling for an independent investigation. Eventually, in November 2013 the State Secretary for Security responded to the organization that an internal investigation on police actions that day had been conducted and that no irregularities had been established.

For the purpose of this report, Amnesty International has not covered all the demonstrations that have been taking place in the last few years in Spain. The concerns raised in the report do apply to other demonstrations not mentioned in the report. The specific incidents covered

in detail in this report took place in the demonstrations and gatherings in Madrid, such as the one at Puerta del Sol, on 27 April 2012, in protest at the detention of various people accused of bringing Madrid metro to a halt; the demonstration on 12 May 2012 in celebration of the first anniversary of 15M; the demonstration on 11 July 2012 outside the Ministry of Industry, so-called 'Black March', which brought together thousands of miners and their families; the demonstration on 25 September 2012, so-called "Surround the Congress"; the demonstration on 4 October 2012 before the Audiencia Nacional in protest at the arrest of organizers of the "Surround the Congress" demonstration; the march on 23 February 2013 under the slogan "Citizens of March", a joint gathering of various non-violent protest movements; the gathering organised by PAM close to the house of the Deputy Prime Minister on 6 April 2013. In Barcelona, the protest held on 14 November 2012 following the end of the general strike; and the gathering held in Guadalajara, in front of the Azuqueca de Henares Specialist Medical Centre on 12 December 2012, in protest of the cuts in the health services.

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4. THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN INTERNATIONAL LAW AND STANDARDS, AND SPANISH LAW AND PRACTICE

The right to freedom of peaceful assembly, together with the closely related rights of freedom of association and freedom of expression, is enshrined in human rights treaties to which Spain³⁵ is a party, including the International Covenant on Civil and Political Rights (ICCPR)³⁶ and the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).³⁷ Also it is included in the Charter of Fundamental Rights of the European Union.³⁸ States have an obligation to respect, protect and fulfil these rights, that is, to ensure that their own agents do not violate these rights and that no restrictions are imposed on them other than those which are demonstrably necessary and proportionate for a legitimate purpose permitted under international law; to protect the exercise of these rights against interference by third parties; and to ensure that individuals within their jurisdiction are able to exercise these rights in practice. As the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, has underlined, this means that states have a positive obligation under international human rights law not only to actively protect peaceful assemblies, but to facilitate the exercise of the right to freedom of peaceful assembly.³⁹

In January 2013, the Office of the UN High Commissioner for Human Rights (OHCHR) issued a report to the Human Rights Council on best practices to ensure the promotion and protection of human rights in the context of peaceful protests, which included input from independent experts including relevant UN special rapporteurs, UN member states, national human rights institutions and civil society organizations.⁴⁰

Following this report, in its resolution 22/10, which was adopted without a vote (that is, without objections), the UN Human Rights Council, of which Spain was a member, noted among other things that participation in peaceful protest can be an important form of exercising the rights to freedom of peaceful assembly, and of association, freedom of expression and of participation in the conduct of public affairs; stressed that everyone must be able to express their grievances or aspirations in a peaceful manner, including through public protests, which should not be viewed as a threat; and called on states, among other things, to facilitate peaceful protests.⁴¹

The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), together with the Council of Europe's European

Commission for Democracy through Law (Venice Commission), has issued detailed Guidelines on Freedom of Peaceful Assembly with a view to assisting states in ensuring that their law and practice on freedom of peaceful assembly complies with European and international standards.⁴² The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, appointed by the UN Human Rights Council, has stated that he considers these guidelines to be the most advanced set of good practices available.⁴³

The right to freedom of peaceful assembly can be exercised by individuals and groups and associations and is one of the foundations of a democratic society. Facilitating participation in peaceful assemblies helps ensure that people have the opportunity to express opinions they hold in common with others and facilitates dialogue within civil society and among civil society, political leaders and government,⁴⁴ as well as being important for the full enjoyment of other human rights.⁴⁵

As has been reiterated by the European Court of Human Rights (European Court) on numerous occasions, the right to freedom of assembly covers both private meetings and meetings on public thoroughfares as well as static meetings and public processions; this right can be exercised both by individual participants and by those organising the assembly.⁴⁶ As public assemblies are held to convey a message to a particular individual, group or organization, they should, as a general rule, be facilitated within “sight and sound” of their target audience.⁴⁷

Article 21 of the Spanish Constitution recognises the right of peaceful assembly.⁴⁸ In line with the European Court of Human Rights, the Constitutional Court has defined the right to assembly as the “collective manifestation of freedom of expression exercised by means of a transitory association of persons, which operates as an instrumental technique at the service of the exchange or exposition of ideas, the defence of interests or the raising of problems or demands”. It has also recognised that for many social groups, this right, in practice, is one of the few means they have of being able to publicly express their ideas and demands.⁴⁹

The exercise of the right of freedom of assembly enshrined in Article 21 of the Spanish Constitution is implemented by means of Organic Law 9/1983, regulating the Right of Assembly.⁵⁰ This law contains a definition of the different types of assemblies which are under its scope and establishes the legal requirements for exercising this right. Organic Law 1/1992 on the Protection of Public Safety⁵¹ supplements Law 9/1983 on the Right of Assembly, insofar as it empowers the security forces to take action aimed at maintaining law and order during demonstrations or assemblies. Chapter III of this law envisages action on the part of the authorities to break up assemblies or demonstrations or carry out identity checks of those taking part in them. In particular, Article 16 states that the authorities must take the necessary measures to safeguard the holding of assemblies or demonstrations, but the second paragraph of this article also envisages the possibility of the authorities using the law enforcement bodies to break up assemblies or demonstrations in public places which have been banned or restricted on grounds set out in Article 5 of Organic Law 9/1983. Article 20 provides for police officers to carry out identity checks on the streets as part of their duties when such checks are necessary in order for them to perform their function of ensuring security. Chapter IV provides for penalties in cases of infringement of the law. Articles 23 to 26 list the types of infringements as serious, very serious or minor. Article 28 establishes the penalties for each infringement.

4.1 RESTRICTIONS ON ASSEMBLIES

While international law permits the exercise of the right to freedom of peaceful assembly, together with the closely related rights of freedom of association and freedom of expression, to be subject to certain restrictions, any such restrictions are only permissible if they are, first, provided by law; second, for the purpose of protecting certain public interests (national security or public safety, public order, protection of public health or morals) or the rights and freedoms of others; and, third, demonstrably necessary for that purpose.⁵² Any restrictions imposed which do not meet all elements of this “three-part test” constitute violations of the right.

Article 5 of Organic Law 9/1983 regulating the Right of Assembly provides for the authorities to disperse a demonstration on grounds including when there is disruption to public order, with danger to persons or property, or where the attendees are wearing paramilitary uniforms.⁵³ Similarly, Article 10 establishes that authorities may, if they consider there is a risk to public order with danger to persons or property, ban an assembly or demonstration which has been notified, or, where appropriate, propose a different date, duration or route.⁵⁴ Article 11 envisages that promoters or organisers may lodge an administrative appeal, which will be heard as a priority, if they do not agree with the authorities’ decision.⁵⁵

Under international standards, any measure to ban or restrict any peaceful form of freedom of expression or demonstration must be assessed on a case-by-case basis. The UN Human Rights Committee and the European Court of Human Rights have underlined that any restriction may be imposed only for the purposes permitted under international human rights law – that is, to ensure the protection of national security or public safety, public order, public health or morals, or the rights and freedoms of others, must conform to strict tests of necessity and proportionality for that particular purpose and that no lesser restriction will suffice, and must not put in jeopardy the right itself.⁵⁶ Any restriction must also have a clear basis in a law which, because it deals with the exercise of human rights, must be set out in terms which are sufficiently precise to prevent the authorities applying undue discretion with regard to restricting freedom of expression and assembly. The burden is on the authorities to demonstrate the legal basis for any restrictions imposed.⁵⁷

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has highlighted the presumption in favour of holding peaceful assemblies, also stressed in the OSCE/ODIHR Guidelines, which means that an assembly should be presumed lawful and not constituting a threat to public order.⁵⁸ The OSCE/ODIHR Guidelines make clear that the peaceful intentions of organisers of demonstrations should be presumed unless there is compelling and demonstrable evidence that those organizing or participating in that particular event themselves intend to use, advocate or incite imminent violence.⁵⁹

While states have an obligation to guarantee law and order, it is important for public authorities to show a certain degree of tolerance for the inevitable disruption that demonstrations entail.⁶⁰ Assemblies are as legitimate a use of the public space as commercial activities or the movement of vehicular and pedestrian traffic.⁶¹ The right to freedom of assembly and peaceful demonstration means that it must be possible for protestors to have a real opportunity to peacefully get their message across to the right people, particularly when this relates to public representatives. Therefore, as a general rule, assemblies should be facilitated within the “sight and sound” of their target audience.

Reasonable alternatives to enable this should be offered if any restrictions are imposed on the time, place or manner of an assembly.⁶²

The Spanish Constitutional Court has ruled that to ban a gathering, the mere suspicion or possibility that disruption will occur is not sufficient. “The person taking the decision must have sufficient objective information on the concrete circumstances of each case, on the basis of which any normal person might arrive rationally at the same conclusion (...); if in doubt *favor libertatis*, and therefore the impossibility of banning the holding of the assembly”.⁶³ With regard to the limitations that may be imposed on the right to demonstrate, the Constitutional Court has stated that no restrictions can be absolute, nor may they obstruct the fundamental right beyond reasonable measure, as the importance of the fundamental right restricts the scope of the limiting regulations that may be placed upon it.⁶⁴ The Court has also repeatedly maintained that freedom of expression and information covers not only inoffensive or immaterial criticism but also that which could annoy or offend, especially when related to someone in public office.

PROHIBITIONS ON DEMONSTRATIONS AROUND POLITICIANS' HOMES AND OFFICES

When the Popular Legislative Initiative entitled “Proposed Law regulating payment in kind, a stop to evictions, and rented social housing” was reformulated by the Congress and processed together with a Draft Bill of urgent measures to strengthen the protection of mortgage debtors, presented by the government PAM, which considered that the initiative of the government distorted the popular initiative, started organising peaceful gatherings to convey their message of protest to politicians of the Popular Party at the official headquarters or near the private dwellings of the main figures of the party. The Ministry of Interior issued an urgent circular to all police stations instructing them not to allow gatherings less than 300 metres from the dwellings of public officials and politicians. The Office of the Public Prosecutor also distributed a circular to prosecutors referring generally to “situations of harassment in the personal environment of different parliamentary representatives and other institutional post holders, promoted by those affected by mortgage procedures, and other similar groups”, requesting that its Technical Office be informed “of all events of this nature that occur within the jurisdiction of your office”.

The Administrative Chamber of the Basque Supreme Court⁶⁵ declared the decisions of the director of Ertzaintza (Basque police force) valid when he proposed changing the route of two demonstrations notified by STOP Evictions Gipuzcoa and the Bizkaia Platform for People Affected by the Mortgage Crisis, banning gatherings outside the attorney office of two politicians of the Popular Party.

Amnesty International considers that the measures taken by the authorities to impose a general restriction on all demonstrations in the vicinity of the residences and offices of key politicians or institutions exceed what is permissible under international human rights law. While the stated justification for the prohibition was protecting the rights of others, it was so wide-ranging as to effectively prevent protesters from directing their protest to those politicians who were their target audience; moreover a generalised ban is not in keeping with the principles of strict necessity and proportionality and minimum restriction.

4.2. NOTIFICATION AS A PRIOR REQUIREMENT FOR PUBLIC ASSEMBLIES

As mentioned above, Organic Law 9/1983 regulating the Right of Assembly establishes that anyone intending to organise a demonstration or gathering with more than 20 people must comply with the requirement of prior notification to the authorities responsible for public order, that is, the Government Delegate office. The requirement of notification is also enshrined as a requirement in the Spanish Constitution.⁶⁶ The Law regulating the Right of Assembly provides that the notification must be in writing and submitted at least 10 days in advance. Only in urgent cases, which must be justified on extraordinary and serious grounds, can notification be accepted at 24 hours' notice.⁶⁷ However, the law is not clear as to what such exceptional grounds might be, nor does it make explicit allowance for spontaneous demonstrations. The notification must include a full identification of the organisers, the planned place, date, time and duration, the purpose of the event, the proposed itinerary and the security measures planned by the promoters or requested to the authorities.⁶⁸

The authorities must respond within 72 hours after the notification has been submitted. They have the power to refuse to permission for the demonstration to go ahead at all or to require modifications to be made to its timing, itinerary or duration if there are reasonable grounds to believe that disruption may occur to public order, with danger to persons or property; if they do so, they must state reasons for this.⁶⁹ The decision can be appealed by organisers to the competent courts, through a speedy procedure.⁷⁰

The Constitutional Court has maintained that the right to demonstrate noted in Article 21 of the Spanish Constitution is subject to a prior requisite: the duty to notify authorities in advance, although the requirement of prior notification cannot be considered as an authorisation. The notification should be regarded simply as a declaration of intent, enabling the administrative authorities to take appropriate actions to make possible both the free exercise of the protestors' rights and the protection of the rights and property of third parties.⁷¹ However, the Supreme Court has ruled that failure to comply with the 10-day notice period (except under exceptional and urgent circumstances) gives the authorities the power to ban a demonstration.⁷²

According to information from the Government Delegate's Office in Madrid, 54 notified demonstrations were refused permission to go ahead in Madrid in 2012. In 52 of these, the reason was that they were not notified sufficiently in advance. Reasons of public order were alleged in only two of the cases. In 2013, up to May, 72 demonstrations or gatherings had been refused permission in Madrid, in all cases because they were not notified by the requisite date.

Penalties for attending demonstrations which take place without the required prior notification have been reported from various parts of Spain. In Madrid, in 2012, 734 unnotified demonstrations or gatherings took place. In 2013, as of May, 197 had been held without fulfilling the notice requirement. In respect of these demonstrations, the failure to provide notice or the fact of holding an unnotified demonstration was in itself the cause or reason for penalties being imposed on participants without any further factors (such as if the authorities held that the demonstration caused a disturbance of the peace) being cited.

INTERNATIONAL STANDARDS ON NOTIFICATION REQUIREMENTS

The UN Human Rights Committee and the European Court of Human Rights have held that a

requirement to give prior notice of an assembly is compatible with the permissible limitations on the exercise of the right set out in the ICCPR and the European Convention. But a requirement to give notification must not be such as to amount in practice to a requirement to obtain authorisation.⁷³ The European Court has repeatedly noted that the purpose of notification requirements must be to allow the authorities to take reasonable and appropriate measures to guarantee the smooth conduct of any assembly, meeting or other gathering,⁷⁴ and that, while the authorities may use notification requirements to ensure protection of the rights of others or to prevent disorder or crime, they should not “represent a hidden obstacle to the freedom of peaceful assembly protected by the Convention”.⁷⁵

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has explicitly stressed that no authorisation should be required to assemble peacefully.⁷⁶ The exercise of the right to freedom of peaceful assembly should be governed at most by a regime of prior notification, which should not be burdensome, the rationale of which is to allow state authorities to facilitate the exercise of the right and take measures to ensure public safety and order and the rights and freedoms of others.⁷⁷ The Special Rapporteur has recommended that notice should be subject to a proportionality assessment, and should only be required for large assemblies or those where a certain degree of disruption is anticipated, with a recommended maximum notice requirement of, for example, 48 hours.⁷⁸ Similar recommendations are made by the OSCE/ODIHR Guidelines, which stress that prior notification is not generally necessary and should only be required where its purpose is to enable the state to put such measures in place; if required it must constitute “a notice of intent rather than a request for permission”⁷⁹ and that a notification process should allow adequate time for the completion of an expeditious appeal to (and ruling by) a court should any restriction be challenged.⁸⁰

Spontaneous assemblies may sometime take place as an immediate response to some triggering event, where the organiser (if there is one) is unable to meet the deadline for prior notification; the ability to hold them is important because delay would weaken the message to be expressed.⁸¹ Spontaneous assemblies also occur coincidentally which have no identifiable organiser but when a group of persons gathers with no prior advertising or invitation, often as a result of commonly held knowledge or knowledge about a particular event disseminated via the Internet or other forms of instantaneous communication, or where a lone demonstrator is joined by others.⁸² The OSCE/ODIHR Guidelines note that spontaneous assemblies should be lawful and should be regarded as an expected (rather than exceptional) feature of a healthy democracy⁸³ and that the authorities should still protect and facilitate any spontaneous assembly so long as it is peaceful in nature.⁸⁴ The UN Special Rapporteur has stressed that if organisers have failed to notify the authorities, the assembly should not be dispersed automatically and the organisers should not be subject to criminal sanctions or to administrative sanctions resulting in fines or imprisonment, simply on this account.⁸⁵

In Spain, however, in contrast with international standards, including the recommendations of the UN Special Rapporteur and the OSCE/ODIHR Guidelines, there is no provision for spontaneous assemblies. On this basis, protests which have not been notified to the authorities within the set time limits may be subject to dispersal and, as described in more detail in the following pages, those who have participated in them may be liable to substantial administrative fines. In light of this, Amnesty International believes that the prior notification requirement amounts in practice to a requirement for authorisation. Incidentally,

this is also reflected in the language of police reports and notifications of penalties which Amnesty International has seen, which refer to “unauthorized” assemblies, such as in the case of Sandra described below, as well as in the comments of the State Secretary for Security to a committee of the Congress. Spanish legislation should be amended to expressly include the possibility of an exemption from the prior notification requirement in the case of spontaneous demonstrations. Organisers and participants should not be subject to criminal proceedings or to administrative proceedings resulting in fines for failure to comply with notification requirements, or for participating in such protests.

SANDRA

Sandra (assumed name), 32 years of age, who works in health services, participated in a protest, on 12 December 2012, in front of the Azuqueca de Henares Specialist Medical Centre during a visit by the Councillor of Health of the Autonomous Community of Castilla la Mancha, accompanied by other authorities, for the inauguration of the Advanced Medical Post and a mobile emergency health unit. On 21 February 2013 she was notified by the Government Delegate Office of Guadalajara of a decision to bring proceedings for an infringement of the Law on the Protection of Public Safety for participating in the protest.

Sandra told Amnesty International that a group of people protested against the cuts in health services during the Councillor’s visit and the event was public and announced as a spontaneous act. The police report that led to the decision to initiate proceedings against Sandra, which Amnesty International has had sight of, notes the basis of the offence as “participating actively in an unauthorised meeting or protest without having requested authorisation from the competent authority”.⁸⁶

However, a letter that authorities later sent to Sandra did not raise the issue of the lack of notification, but instead warned her that she would be facing a fine of 600 euros for disturbing the peace under Article 23 n) of the Law on the Protection of Public Safety.⁸⁷ As of the time of finalising this report she was awaiting a response to her appeal before the superior body (Ministry of Interior) against the fine.

There is an inconsistency between the police report and the offence stated in the authorities’ letter sent to Sandra on the opening of proceedings. Amnesty International has had access to the authorities’ letter to Sandra stating the proposed fine and to the police report, which does not describe the specific action that led to Sandra receiving the penalty. It simply states generally that, because of the visit of the Councillor and other officials, “a group of 40 people, apparently members of different groups, met to protest at the government cuts, carrying placards and using whistles, horns and other instruments emitting a continuous sound. While the authorities were conducting the inauguration, they were subjected to a large number of insults and attempts to disturb the proceedings, thus causing a serious breach of the peace”.

5. PENALTIES ON ORGANISERS AND PARTICIPANTS - A WAY TO DISCOURAGE PROTEST?

5.1 ADMINISTRATIVE PENALTIES UNDER THE LAW ON PROTECTION OF PUBLIC SAFETY

Since the increase in social protest, Amnesty International has received a growing number of reports about administrative penalties imposed by the authorities in connection with participation in demonstrations. Such penalties are generally justified by the authorities on the basis of disruption of public order or disobedience to orders of police officials, for example not obeying an order to leave a gathering or demonstration which has not been notified, even though no disruption of public order has occurred.

As noted above, Organic Law 9/1983 regulating the Right of Assembly is complemented by Organic Law 1/1992 on the Protection of Public Safety. Chapter IV of the latter establishes as a serious infringement the holding of assemblies in public places or demonstrations in breach of the requirements of the Law regulating the Right of Assembly.

The Law on the Protection of Public Safety permits a series of actions on the part of the security forces aimed at maintaining or re-establishing public safety, particularly in the case of group disorder or serious public insecurity. For example Chapter III establishes the premises on which law enforcement bodies can intervene. Article 16 empowers law enforcement bodies to break up assemblies on the public thoroughfares under the circumstances identified in Article 5 of Organic Law 9/1983 regulating the Right of Assembly (that is, in case of unlawful demonstrations under criminal law, when there is disruption of public order endangering people or property, or when participants are wearing paramilitary uniforms). The Law also establishes that, when exercising their duties of investigation or prevention, the law enforcement bodies may demand that people identify themselves and may conduct the relevant check on the public thoroughfares, if establishing those individuals' identities is necessary in order to carry out the duty of protecting public safety.⁸⁸

According to Article 19 the officers of the law enforcement bodies may limit or restrict, for however long is necessary, the movement or presence of people on the public thoroughfares or in public places, in the event of a disruption to public order, public safety or peaceful coexistence, when it is necessary to re-establish this.

The Law also establishes the system of administrative penalties, setting out a staggered amount for the fines, ranging from around 30,050 to 601,000 euros for very serious infringements; 300 to 30,050 euros for serious infringements, which would include those mentioned above; and up to 300 euros for infringements considered minor.⁸⁹

Infringements related to demonstrations and holding assemblies, for example holding assemblies in the public thoroughfare or demonstrations without fulfilling the requirements of the Law on the Right of Assembly (such as the requirement to notify authorities within the set deadlines), mostly fall within the scope of Article 23, and are considered as serious, so can be punished with fines in the range of 300 to 30,050 euros. In such instances, it is those considered to be organisers who are held responsible. In the case of unnotified demonstrations, the Law on the Protection of Public Safety establishes that those who can reasonably be identified as leading the assembly or demonstration, or as the inspiration behind the demonstration, shall also be considered as organisers.⁹⁰

Also considered as a serious infringement is the refusal to dissolve demonstrations or assemblies when ordered to do so by the competent authority, for instance when a demonstration is considered to be causing disruption to public order endangering people or property. Article 24 states that the same acts can be treated as very serious infringements, taking into account the risk of harm caused or when public services, public transport or regularity of supplies have been disrupted, or when group violence or threats have occurred; in this case, fines are in the range of 30,050 to 601,000. Article 26 sets out the infringements considered to be minor, such as the refusal to show an identity document if required by the police or disobedience to an order given by the authorities.

According to information from the Government Delegate's Office in Madrid, in 2012 measures were taken to impose administrative penalties in a total of 1,117 cases.

According to information provided by the 15M Legal, between May 2011 and April 2013, this group was made aware of measures being taken in 953 cases to impose administrative penalties directly related to participation in protests in Madrid. The majority of these were for taking part in an unnotified demonstration.⁹¹ Another lawyer of 15 M Legal, who spoke to Amnesty International, said that, between 12 and 15 May 2012 alone – around the first anniversary of 15M, when again thousands mobilised in the streets – more than 314 people had proceedings brought against them for infringement of the Law on the Protection of Public Safety.

Most of the penalties which have been reported to Amnesty International vary from 300 euros for minor infringements to 1,500 euros for serious infringements. The Government Delegation in Madrid has recognised that, by allowing for a wide range of penalties for each category of infringement, Article 28 of the Law on the Protection of Public Safety lacks precision; accordingly, it has set criteria to be taken into account in order to establish the amount of the fine. These criteria are: whether it was the individual's first offence or a repeated offence, the offender's financial capacity, and the extent of the damage. According to what an official of the Government Delegation office told Amnesty International, if the person is one of the promoters, "their responsibility for the infringement is taken as read".⁹²

In June 2012, concern at the increase in identity checks and administrative proceedings brought against individuals attending protests prompted a parliamentary question denouncing the fact that people who had nothing to do with whether the gathering in which they were participating had been notified or not were required by the police to produce their identity documents, and then later received a notification at their home of an administrative penalty for having participated in an unauthorised demonstration. The State Secretary for Security at

that time, in a statement to a committee of the congress, indicated that the right of demonstration was not an absolute right and that it was conditional upon authorization being requested;⁹³ only then, he said, does it prevail over the rights of others. Otherwise, the security forces would be forced to act. He denied having come across cases of individuals unaware of the unnotified status of a demonstration and being fined because of it. He added that “anyone going to a demonstration does so because they are responding to a call or because they are going to identify with or show their support for a particular thought or demand...” denying that there was anything arbitrary in imposing these penalties.⁹⁴

5.2 ADMINISTRATIVE FINES FOR PROTEST ORGANISERS

MARIA

“They want to destroy the leadership of the movements [...]. I keep participating in demonstrations and other activities. I've been told we'd all pay the fine jointly, but you can see that there is fear, young people who have no job cannot afford paying fines. Low-intensity pressure is doing a lot of harm, there is a lot of repression, and it's increasing. They say that movements are disheartened, but the truth is that people are afraid.”

Maria (assumed name), 49 years of age, received in January 2013 notification from the Government Delegate's Office in Madrid that proceedings were being brought against her, with a fine of 1,000 euros. On 19 October 2012, Maria and two others had participated in a press briefing near the Congress of Deputies in protest at the budget presented by the government and announcing that they would submit a popular proposal for amendment in this regard. They also provided information on a series of protests due to take place during the last week of October. This information was also public and had been available on the web page of the 25-S Platform since 15 October.⁹⁵ Maria explained to Amnesty International that the platform had decided not to give notice of the protests directly to the Government Delegate's Office in Madrid; according to reports in the media, the person who had notified the 25 September protest had been notified that he was to be fined 6,000 euros for the disturbance caused on the day.

According to the notification to commence administrative proceedings, dated 21 January 2013, Maria is considered to have been in violation of Article 23 c) of the Law on the Protection of Public Safety, for having organised an unnotified protest on 25 October 2012. She told Amnesty International that the day of the press briefing she was not requested for her identity card by any police officer. On 15 November, however, as she was leaving a café before going to another press briefing in which she was not directly participating, police officers asked to see her identity document. Of the three people who participated in the press briefing held in October 2012, Maria was the only one to receive a fine.

As explained before, under the Law on the Protection of Public Safety, which establishes the system of penalties, it is considered a serious infringement to hold assemblies or demonstrations in the public places, without fulfilling the requirements of Law 9/1983 regulating the right of assembly, the responsibility for which lies with the organisers or promoters. In the case of assemblies on the public thoroughfare and the holding of protests that have been notified to the authorities, but not within the time limits set by law, the organisers or promoters are considered to be those private individuals or legal bodies that

signed the corresponding written notice. When no notification has been submitted, then the people who preside over, run or exercise similar actions or those who, through publications or calls for assemblies or demonstrations, through the speeches they make or the printed material they distribute there, through the slogans, flags or other signs they show or for any other reason, or people who may reasonably be determined to be the inspiration behind the assembly shall also be considered its organisers or promoters.

Amnesty International is concerned at the extent of the powers which the law allows to police officers to determine who is the promoter or organiser of a protest, and that any sign that might indicate that someone is leading the protest or is the person being “obeyed” is regarded as sufficient for making this determination.⁹⁶

5.3 ADMINISTRATIVE FINES AGAINST PROTEST PARTICIPANTS

Although the Government Delegate’s Office in Madrid has stated to Amnesty International that administrative proceedings are not brought against participants in unnotified demonstrations, but only against promoters or organisers,⁹⁷ Amnesty International has found numerous cases where proceedings have been taken against individuals who have simply been participating, even though there was no disturbance to public order. In these cases the authorities have made use of the provisions of the Law on the Protection of Public Safety regarding disobedience to the authorities.⁹⁸

PABLO

On 15 November 2012, Pablo Ortíz, 33 years of age, received notice of the commencement of administrative proceedings with a proposed fine of 300 euros, for refusing to comply with the instructions of a police officer.⁹⁹ According to the file of the Government Delegate’s Office in Madrid, the fine was for his participation in a gathering of 80 people on the corner between calle Prim and calle Recoletos on 4 October 2012 between 9.30 and 13.00 hours, protesting at the arrests made following the events of 25 September 2012. According to Pablo, he met with a total of 19 people to show their support for a friend who had been accused of a crime against the supreme state institutions in connection with the demonstration held on 25 of September.¹⁰⁰ On their arrival, they found other people there, journalists, police and the relatives of other people who had been accused. It was not an organised event and, according to his testimony, the police did not approach him during the gathering.

“When I left, they demanded my ID. I asked why and the police said for attending an unauthorised gathering.”

Pablo told Amnesty International that at this moment, there were only two others with him and they were already leaving the area. He therefore contested the proceedings, and in his representations he alleged that he told the police officer that in Spain there is a requirement of notification, but not a request for authorisation, and that since they were less than 21 people at that moment there was no need for a notification. He also alleged that in response, the police officer stated that he had a foot on the road, so he put his foot on the pavement. Even so, the officer required him to show his identification and took note of it. Pablo was not informed that this was with the aim of imposing a fine. He denies disobeying the authorities’ orders, as he was leaving the demonstration when for the first time an officer approached.

The European Court of Human Rights has held that the police disbanding of peaceful spontaneous assemblies “solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”.¹⁰¹ According to this, the mere fact that the demonstration is not notified does not grant officers the authority to order individuals acting peacefully to leave a public space, and therefore to fine them for disobedience if they do not follow the order. The European Court has stated that “freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected to a sanction even at the lower end of the scale of disciplinary penalties for participation in a demonstration which has not been prohibited, so as long this person does not himself commit any reprehensible act on such an occasion”.¹⁰²

GATHERING AT PUERTA DEL SOL, 27 APRIL 2012


On 27 April 2012, there was a gathering in Puerta del Sol in Madrid, in protest at the detention of various people accused of bringing the Madrid metro to a halt as part of the protest at the increase in metro prices. In the Government Delegate’s notification sent to one of participants, with a fine of 300 euros, it says: “Between 20 and 21.45 hours on 27 April 2012, there was a gathering in the environs of the commuting station of Puerta del Sol, a group of nearly 150 people protesting against the detention of the activists of the collective ‘Toma el Metro’ on 25 April 2012. The police officers deployed there informed one by one to the participants among whom you were, that the gathering had not been notified to the Government Delegation Office of Madrid, therefore, you should disperse. The order was disobeyed and you carried on with the protest up to 21.45.”

In his representations, which have been shared with Amnesty International, one of the individuals who received this notification denies that any police officer told him to leave the place, but he says that what the officer did, without any explanation, was only to request his identity card.

The 15M Legal told Amnesty International that subsequently, proceedings were taken against 47 people out of a total of 76 identified, for infringement of Article 26 h) of the Law on the Protection of Public Safety (disobeying orders of the police).

Although Article 19 of that Law envisages that police officers may limit or restrict the movement or presence of people in public places, in the event of a disruption of public order, public safety or peaceful coexistence, and therefore, to disobey an order may be an infringement of Article 26 h), the police report about this gathering, in the files of the administrative proceedings before the court, made no mention of disruption to public order (see next page).

The picture below is the police report of the demonstration held on 27 April 2012



Unidad de Intervención Policial

INFORME MANIFESTACION-CONCENTRACIÓN

1. TIPO DE ACTO: Concentración
2. COMUNICADA / NO COMUNICADA: No Comunicada
(Se debe comunicar a la Jefatura de la Unidad o al responsable de la fuerza policial a los concentrados, y así se hace constar)
3. CONVOCANTE/S: 15 -M
4. OBJETO DE LA REIVINDICACIÓN: Contra las detenciones de los activistas que sabotearon el metr
5. LUGAR: Pta. Sol
6. FECHA: 27/04/12 HORA DE COMIENZO: 20:00 HORA FINALIZACIÓN: 21:45
7. NUMERO APROXIMADO DE PARTICIPANTES: 150 personas.
8. CONTENIDO DE LAS PRINCIPALES PANCARTAS:
9. FRASES COREADAS DURANTE EL ACTO: "Yo también tire de la palanca", "Lo llaman democracia no lo es", "Libertad activistas presos"
10. DESCRIPCIÓN DETALLADA DE LOS INCIDENTES HABIDOS (Indicar si ha habido algún hecho grave por parte de los participantes con fines de intimidación o violencia hacia miembros o número de cargos profesionales)
11. DATOS DE FILIACIÓN DE LOS PARTICIPANTES EN LOS INCIDENTES PARTICULARIZANDO SU ACTUACIÓN (Cifra, nombre y apellidos, domicilio. El "sí" indica a contar el listado rodado). Este punto podrá ratificarse de relación que se adjuntará como anexo.
12. DOCUMENTACIÓN QUE SE ACOMPAÑA (Copia de actas, recibos de prensa, ...)
Se acompañan Hojas de Filiación de aquellas personas que informadas de que la concentración no esta comunicada a la Delegación del Gobierno de Madrid, hacen caso omiso al requerimiento policial de abandonar el lugar.
13. OBSERVACIONES (en su caso):
Sobre las 20:00 horas se concentran en la inmediaciones del acceso al intercambiador de la puerta del sol, un grupo de entre 40 y 50 personas del colectivo 15-M, a las cuales se les va indicando que la concentración de la que están formando parte no está comunicada a Delegación del Gobierno de Madrid por lo que se les informa individualmente que deben de abandonar el lugar. Como no hacen caso al requerimiento policial se procede a su identificación.
A las 20:45 horas el número de concentrados se puede valorar en unas 150 personas que proceden a efectuar los cánticos que se detallan en el apartado 9.
A partir de las 21:15 horas el número de personas va decreciendo hasta que a las 21:45 horas y después de observar que no queda nadie en el lugar, se da por finalizado el servicio.
14. IDENTIFICACIÓN DEL JEFE DE LA FUERZA POLICIAL ACTUANTE (Carné profesional, unidad, sección y grupo que dirige)
El Inspector con carné profesional número
15. FIRMA DEL RESPONSABLE:

In his recent report on Spain following his visit in June 2013,¹⁰³ the Commissioner for Human Rights of the Council of Europe has shown concern about the increasing use of administrative sanctions against participants in demonstrations. The Commissioner stresses that the imposition of such measures on participants in spontaneous or unauthorised demonstrations can amount to an infringement of the right to freedom of expression and peaceful assembly.¹⁰⁴

Lawyers with whom Amnesty International has spoken have also drawn attention to the arbitrary nature of the penalties, whereby the same conduct by different people or on different occasions is penalised with different levels of fine.¹⁰⁵ They also noted a series of irregularities in the proceedings. The organization has observed that in many instances, as in the case of the gathering at Puerta del Sol, Madrid, on 27 April 2012 (above), the proceedings include no description of the offending conduct which is the basis for bringing the proceedings. Moreover, after the individual has made his or her representations contesting the intention to impose the fine, instead of the report of the alleged infringement being ratified by the same police officer who brought the complaint and who witnessed the individual's actions, as is required by the legislation on the administrative procedure, there have been cases in which the report has been ratified by another officer, who did not witness the events.

Amnesty International has found clear indications that the penalties imposed on participants in protest actions may be having a dissuasive effect, deterring individuals from taking part in public protests and exercising their right to freedom of peaceful assembly. Many people who face financial constraints as a result of the general economic and financial situation are unable to pay the fines. Some who are particularly active in protests have found themselves subject to penalties a number of times, to the point of having run up debts or of having been advised by their own lawyers to lower their profile in public activities.¹⁰⁶ For example some members of the Platform for those Affected by the Mortgage Crisis (PAM) have thus run up a total of 40,000 euros in fines – although a representative of this Platform told Amnesty International that it could be more, as they do not collect information centrally. She also highlighted that the fines are having an effect not only on those who have been subjected to them, but on others who have not been penalised themselves but who fear they might in the future be subject to penalties for claiming their rights.

This amounts to a grotesque situation of people trying to exercise their human rights and to protest and demand their rights being penalised for doing so. The Special Rapporteur on the Rights to freedom of peaceful assembly and of association has stated that “the ability to hold peaceful assemblies is a fundamental and integral component of the multifaceted right to freedom of peaceful assembly, which shall be enjoyed by everyone. Such ability is of utmost importance to the work of the civil society actors, including those promoting the realization of economic, social and cultural rights, as it enables them to publicly voice their message... especially in the context of the ongoing dire economic crisis”.¹⁰⁷

The imposition of substantial fines on people who have peacefully been taking part in unnotified assemblies points to a failure by the Spanish authorities to comply with their international obligation to respect and ensure the exercise of the right to freedom of peaceful assembly. States may impose a requirement of advance notification as a means of facilitating the exercise of this right while also ensuring protection of the rights of others. While international human rights law and standards permit states to impose certain restrictions on the exercise of this right where such a restriction is demonstrably necessary and proportionate for certain specified purposes, such as protection of the rights of others or of public order, it is not clear that the widespread imposition of substantial fines on organisers of unnotified assemblies, still less on participants, and the vague and broad grounds on which people can be identified as organisers, meets this test of necessity and proportionality and legitimate purpose. It runs directly counter to the explicit recommendation of the UN

Special Rapporteur on the rights to freedom of peaceful assembly and of association that organisers who have failed to notify the authorities should not be subject to sanctions resulting in fines.¹⁰⁸ Moreover, and particularly in cases where the individuals concerned have not been shown to have committed offences of disrupting public order or other recognisably criminal offences, but have merely been participating in an unnotified assembly, the imposition of such penalties could amount to arbitrary punishment in so far as they are imposed for exercising the right to freedom of peaceful assembly.

5.4 THE “*ESCRACHE*” OF THE DEPUTY PRIME MINISTER

In one of the protest actions aimed at amending the Mortgage Law organized by the Platform for those affected by the Mortgage Crisis (PAM), around 300 people gathered close to the home of the Deputy Prime Minister on 6 April 2013.

On 8 April 2013, the Investigating Court of Madrid No. 4 opened proceedings after a criminal complaint to the police filed by the Deputy Prime Minister’s husband against 27 of the demonstrators whom police considered to be the organisers. Given the lack of information presented by the authorities’ report with regard to the events, the judge requested a series of pre-trial proceedings. The judge also requested for clarification of the reason for considering those 27 people as the organisers, when many of the identity checks that led to their identification had not taken place outside the Deputy Prime Minister’s house but in other places. Finally, the judge dismissed the case as he considered that it was a peaceful demonstration lasting no more than 20 minutes outside the home of the Deputy Prime Minister with the aim of publicising, in a public place, the information and ideas of a group campaigning on the problems of foreclosures and criticising what they saw as the inactivity of the governing politicians, and that their actions could not be considered coercion or threats. In his decision, the examining judge recalled the case law of the European Court of Human Rights with regard to criticising a politician’s exercise of power,¹⁰⁹ and how the right to freedom of expression had to prevail in this case.¹¹⁰

In this case, although the Judge decided that there was no criminal offence, administrative proceedings by the Government Delegation Office in Madrid were opened against these 27 people. At least two of them are facing a fine of 1,500 euros for breach of Article 23 c) of the Law on the Protection of Public Safety, accused of organising the gathering; a further eight face fines that involve accusations of a breach of the peace and disobedience.

In his representations, shared with Amnesty International, one of the individuals who was considered as promoter by one of the police officers policing the gathering denies he was a promoter. He states that he is not personally involved with the PAM, but was in the gathering together with some relatives to show support. He also complained that the police report is very vague and generic on the description of his conduct, which puts him in a position where it is difficult for him to defend himself.

In stressing the importance of freedom of peaceful assembly, and the need to ensure that any notification requirements do not act as a barrier to the exercise of this right, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has repeatedly underlined that if organisers fail to notify the authorities they should not be subject to criminal sanctions or to administrative sanctions resulting in fines.¹¹¹

5.5 ATTEMPT TO CRIMINALISE ORGANISERS – THE CASE OF 25S

Amnesty International is particularly concerned by the attempt to bring criminal charges against the organisers of the demonstration of 25 September 2012 in Madrid, for “crimes against the High Institutions of the State”. In the end, in October 2012, the investigating judge closed the case as there was no evidence that such criminal acts had taken place. The case was brought before the National High Court, which is competent to try particularly serious crimes.

In August 2012, a group of people called the 25S Coordinating Body and the Plataforma En Pie (Stand up Platform) called through online social networks for a massive demonstration to be held in Madrid, in front of the Congress, under the slogan of “Surround the Congress”, with the purpose of directly addressing to its Deputies their protest against perceived injustices.

The website of the 25S Coordinating Body published the following call setting out the intentions of the demonstration:

On 25 August 2012, the 25S Coordinating Body was established by different people, organizations, platforms, assemblies and groups who, having analysed the current unjust situation of a loss of freedoms and rights (Health, Education, Social Services, Jobs, Housing,...) propose a process that will result in a new social model based on participatory popular sovereignty.

To achieve this, we are calling on all citizens to participate both in the Coordinating Body and in concrete actions:

- Surround the Congress until we achieve our objectives.
- Support and promote simultaneous state-level initiatives by surrounding other institutional bodies.

We want 25S to be a day of action and a starting point for all of us to participate in building our future.

The 25S Coordinating Body wishes to distance itself from any individual, group or organization that does not respect the spirit of this call. Violent, racist, xenophobic, sexist, homophobic or fascist expressions are not welcome.

Madrid, 26 August 2012
25S Coordinating Body

Despite the peaceful nature of this call by organisers, a day after the protest, in which there had been clashes between the police and some demonstrators, when appearing before the Congress of Deputies’ Interior Committee on 26 September 2012, the Director General of Police, justifying the police charge that resulted in injuries to more than 60 people (including some police officers) and the detention of 35 demonstrators, stated:

“Yesterday, 25 September 2012 (...), without prejudice to crimes of public order, injury or damages, a crime was committed against Parliament. This crime falls within the competence of the National High Court, and the corresponding statements have thus been taken. (...) Crimes committed against the nation’s supreme bodies and government fall within the competence of the National High Court. (...) Crimes against institutions include the invasion of the seats of the legislative bodies, Article 493,¹¹² promoting demonstrations outside the legislative bodies, Article 494,¹¹³ and trying to enter the seats of the legislative bodies to

present petitions, Article 495,¹¹⁴ thus committing a crime classified under Art. 494 of the Criminal Code". In his reply to questions from the Congress representatives of other opposition groups, the Director General of Police referred to the existence of movements, organizations and calls that are discredited because they resort to violence, "as in the case of 25S", and he referred to proceedings which had been already opened in the National High Court for an alleged crime against state institutions.

As stated in the subsequent judicial decision closing the case, on 14 August, at the National Police Economic and Fiscal Crime Unit (UDEP Central), judicial proceedings had been initiated on the basis of a call known as "Occupy Congress", reiterated on numerous websites, planning a demonstration for 25 September, a date on which Congress would be sitting. According to the police request to the investigating judge, the objective of this call was "to occupy one of the most important state institutions (...) that the call is national in nature and, it could even be stated, given the global nature of the Internet, that it would have an international reach (...)".¹¹⁵ Because of the seriousness of the allegations made by the police, the investigating judge authorised on 20 September a series of identity checks of 30 people, and carried out formal interrogations of eight of them, who were brought formally under investigation (although, as explained in the judicial decision closing the case, the purpose of bringing them formally under investigation was to facilitate their legal defence during the interrogation).¹¹⁶

From 21 September, a number of different media broadcast information about the arrest and the judicial incrimination of the organisers in relation to the allegation of plans for an attack on the supreme state bodies.¹¹⁷

The judge made a decision on 4 October 2012 closing the investigation because the facts alleged did not constitute a criminal offence. The judge also explained his decision not to proceed with further investigation of individual people, who had also been identified by the police, as follows:

"The reason was obvious, in that given the justification in the Government Delegate's agreement to what followed, it was not a call to occupy Congress but rather the 'actual intention was to remain indefinitely in the Paseo del Prado, near to Congress', and so it was not as serious as the police made out (actually occupying Congress)."¹¹⁸ (emphasis in the original text)

In his decision, and also linked to the words of the Director General of Police, who indicated in the Congress of Deputies' Interior Committee that the events, given their severity, fell under the remit of the National High Court, the judge referred to the fact that, on 27 September, "In a brief letter, the Madrid Provincial Information Team shared generally with this court the fact that, from 19.00 hours on 25 September, altercations, throwing of objects and attempts to cross the security perimeter of Congress took place, for which reason the police had to act to prevent an attempted mass invasion of Congress, (...) with 35 people arrested for attacks, injury, resistance and disobedience, and public disorder, without concretely specifying the accusations against each detainee". On 28 September, a copy of the police report was submitted, in which "there was no reference to the crime against the supreme state institutions". The judicial decision notes that, on 1 October, the judge requested the minutes of the diary of sessions of Congress on the day when the

demonstration took place:

“(T)he minutes show no disruption to the normal course of the sessions. Moreover, one deputy, in the time allocated for position setting, even stated that ‘the Congress of Deputies has been able to maintain its activity thus far with absolute normality (...) and we know that all the Deputies have been able to reach the Chamber without any problem’.”

As noted above, on 4 October 2012, the judge closed the investigation proceedings, as he was unable to establish infringements of Articles 493, 494 and 495 of the Criminal Code, noting that the call to organise had made no reference to any form of violent action, that there was no disruption to the normal activities of the Chamber on that day, that in contrast with what the police report said, there was no prior intention to violently enter Congress, and that one could not talk of those accused in this proceedings of being promoters, or of leading a group (which the police report had termed “radical”) with the purpose alleged by the police, but they were acting as separate individuals and in this regard “it was enough to see that they were arrested in different places without any cohesion of events”.

6. POLICING DEMONSTRATIONS

As the number and frequency of demonstrations has increased throughout Spain since early 2011, there have been many reports of excessive use of force by police in the context of those demonstrations. Amnesty International has interviewed individuals who were injured as a result of action by the police and others who observed incidents when the police used what appears to have been excessive force to disperse peaceful demonstrators. It has also examined video footage of such incidents which is available on the Internet, such as footage showing police making use of hand-held batons to repeatedly hit peaceful demonstrators on the morning of 27 May 2011 in Catalonia Square in Barcelona when they violently evacuated those who had been peacefully occupying the square for several days.

Video footage available on the Internet also shows a number of incidents that took place when protesters gathered in Madrid on 25 September 2012 to "Surround the Congress".¹¹⁹ According to media reports, 30 anti-riot units with 1,300 police were deployed at various times during the day. Most of the demonstrators were peaceful, although there were some incidents of clashes between police and demonstrators and physical aggression by some demonstrators towards the police. More than 60 people were injured including 27 police officers. Thirty-five protestors were detained.

Images of both these events broadcast by various media and the multiple images captured and recorded by individuals and posted on the Internet show police baton charges and other use of force by police against peaceful demonstrators. In particular, on 25 September 2012, these images show intervention unit (riot police) officers using batons, some of them to the face and neck, against peaceful demonstrators who were not attacking or threatening anyone. One of those injured was hit several times with batons while he was on the ground shouting he was a plain clothes police officer. These images also show the officers firing rubber balls directly into the crowd, and that the police appeared not to be wearing visible badges or numbers that could enable them to be individually identified, as is required by Spanish legislation.

Amnesty International has identified three particular areas of concern with regard to police action during demonstrations and assemblies: excessive and undifferentiated use of force and inappropriate use or misuse of anti-riot equipment to deal with demonstrators; excessive use of force when arresting demonstrators; and ill-treatment of detainees taken into police custody. In addition the organization has received reports of journalists who have been ill-treated or faced other obstruction by police while doing their work during demonstrations.

6.1 INTERNATIONAL STANDARDS ON THE USE OF FORCE

While policing demonstrations is a difficult and complex task, and it may sometimes be necessary for law enforcement officials to use force in order to carry out the state's responsibility to maintain public order and safety and prevent crime, in carrying out their duties they must comply with the state's obligations under international law. In particular, law enforcement authorities must ensure that everyone can enjoy the right to peaceful assembly, and that the rights to life and to physical and mental integrity are respected at all times. International law enforcement standards are clear that any use of force by the police

should be exceptional and must comply with the state's international human rights obligations, particularly the obligation to respect and protect the right to life and physical integrity and security of the person. This is set out in Article 3 of 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".¹²⁰

The principles of legitimate purpose, strict necessity and proportionality encapsulated in this provision are elaborated in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which also set out practical measures to be taken by governments and law enforcement agencies to ensure compliance with Article 3 of the Code of Conduct and with international human rights law and standards generally. Police must as far as possible apply non-violent means before resorting to the use of force,¹²¹ and whenever the lawful use of force is unavoidable they must use it with restraint and in proportion to the seriousness of the law enforcement objective, and must ensure that assistance and medical aid are rendered at the earliest possible moment to anyone injured or affected. The Basic Principles underline the right to participate in peaceful assemblies, in accordance with the principles in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and stipulate that in dispersing assemblies that are unlawful but non-violent, law enforcement officials must avoid the use of force or if that is not practicable must restrict it to the minimum necessary.¹²²

The Basic Principles also stipulate that any use of force that results in injury must be reported to superior officers; the incident should be effectively reviewed with independent administrative or prosecutorial authorities in a position to exercise jurisdiction, and those affected by it must have access to an independent process, including a judicial process.¹²³ Arbitrary or abusive use of force by law enforcement officials must be punished as a criminal offence.¹²⁴

This means that even if demonstrators act in a violent way, police must react proportionately, using only the minimum force necessary to contain the situation and re-establish public order. In doing so they must differentiate between those who are acting violently and those who are not. If only a minority of demonstrators acts violently, it contravenes the principle of proportionality and minimum use of force if the police use force against demonstrators generally. Nor is it legitimate to disperse a demonstration simply because some protesters are committing acts of violence. In such instances, any police action should be directed towards those particular individuals.¹²⁵

As noted by the Office of the UN High Commissioner for Human Rights, promoting and protecting human rights requires not only an adequate legal framework but also continuous efforts to ensure their effective implementation.¹²⁶ Dialogue between the protest organisers, the administrative authorities and the police, along with adequate human rights training for police, including on the use of force during protests, can contribute to protecting the human rights related to peaceful protest.¹²⁷

In Spain, Organic Law 1/1992 on Protection of Public Safety permits a series of actions by the law enforcement bodies aimed at re-establishing public safety, particularly in the case of group disorder or serious public insecurity. Generally, actions of the state's law enforcement bodies are regulated by Organic Law 2/1986 on Law Enforcement Bodies. Apart from this

general law, there are also regulations issued by the Ministry of the Interior, for example, Instruction 12/2009 of the State Secretariat for Security (second level authority of the Ministry of Interior) on the conduct required of state law enforcement bodies in order to guarantee the rights of people arrested or in police custody, and Instruction 3/2009 on how arrests are to be made. Instruction 13/2007 of the State Secretariat for Security regulates the wearing of personal identification numbers on officers' uniforms. There are separate regulations for the autonomous police in the Basque Country and Catalonia.

Responsibility for law enforcement in Spain is divided among a number of bodies at national, autonomous regional (Comunidades Autónomas), and local level. At the national level, there are the National Police (Policía Nacional) 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, and it is responsible for traffic and border control. Catalonia and the Basque Country operate their own autonomous regional police (Mossos d'Esquadra and Ertzaintza respectively) which have assumed the competences previously held by National Police and the Civil Guard.

6.2 EXCESSIVE USE OF ANTI-RIOT EQUIPMENT

The cases highlighted below involving the use of force by police with hand-held batons and the firing of rubber ball projectiles raise concerns as to whether the Spanish authorities have established adequate rules and other safeguards to prevent the excessive and abusive use of force by law enforcement officials, and to minimize unwarranted injuries.

Where hand-held batons are used, regular training and strict rules of use are crucial in order to minimise unintentional injuries. This is particularly important because certain areas of the body are especially vulnerable to injury from baton strikes, and types of batons vary in their capacity to inflict harm. Blows applied to the head, neck and throat, spine, lower back, and solar plexus could result in significant injury with bruising and rupture of internal organs, including the heart, liver, spleen, or kidneys or a head injury, whilst blows to bones and joints, including knees and ankles, can result in dislocation and fractures, as well as soft tissue injuries.¹²⁸

The discharge of “less lethal” projectile rounds has sometimes resulted in serious, and sometimes fatal, injuries. The design, deployment and use of such weapons should be very strictly regulated in a manner similar to that of firearms. Studies have shown that whether such “less lethal” projectiles are made from plastic, rubber, fabric, or a mixture of materials, they tend to share a number of dangerous features. At close range, depending on the type of launcher used, many such projectiles can kill or seriously injure.¹²⁹ Medical studies have shown increased risk of death or serious injury if projectiles hit the head and upper body region of a person; even without penetration of the body wall, other significant injuries can occur.¹³⁰ Some evidence suggests that women face a greater injury risk from rubber projectiles than men, particularly to the skull, eyes, brain, lungs, liver, and spleen; children and teenagers also face heightened risk.¹³¹

The likelihood of such projectiles causing serious injuries is increased by the general inaccuracy and unreliability of most launchers and projectiles. A 2001 study in the United States of a range of kinetic impact projectiles found that, in over half the cases, the dispersion at a range of 23 metres was more than 45 centimetres – that is, more than the width of an average person.¹³² This level of inaccuracy significantly increases the risk of

hitting uninvolved individuals, or hitting the intended target in areas likely to cause death or serious injury.

ESTER QUINTANA

After a protest held in Barcelona following the end of a General Strike on 14 November 2012 Ester Quintana, 43 years of age, and unemployed, was hit by a rubber ball fired by the police,¹³³ causing her to lose her left eye. During the protest there were some clashes between police officers and some demonstrators, during which the anti-riot police charged against demonstrators. An Amnesty International representative who observed the demonstration, witnessed how police action was so undifferentiated as to cause panic among the mostly peaceful demonstrators. Many people sustained injuries when they fell as the crowd ran away from the police in fear. According to press reports citing government sources, 29 people were reported as having been injured, of whom 12 were Mossos d'Escuadra (Catalan police). Twenty-two demonstrators were arrested.¹³⁴

Ester¹³⁵ told Amnesty International that when the demonstration had ended she and her friends decided to walk home. Suddenly some anti-riot police vans arrived, while people were dispersing peacefully and there were no incidents around where she and her friends were. Ester was turning to look behind her, looking for one of her friends who were two steps behind, when she received the impact of a rubber ball on the left side of her face.

There are various images taken around the time when Ester was hit, some of which were issued by the press and others taken by participants on mobile phones and available on the Internet.¹³⁶ Her lawyer told Amnesty International that in one of the recordings that have been made available to the investigating judge two shots can be heard. Images posted on the Internet show the anti-riot police with launchers (*lanzaderas*) for rubber balls, and several witnesses also state that they saw this.¹³⁷

A number of images show Ester the moments after she was hit in the face. She had to be taken to hospital where she was operated on that same night and remained for several days. Amnesty International has seen the forensic report, according to which the object that hit her on the left side of her face caused the loss of her eye and severed her orbital nerve.

Despite the evidence about the injury to Ester Quintana, when appearing before the Catalan Parliament on 2 December 2012 to report about the incidents which occurred on 14 November,¹³⁸ the then Councillor of the Interior in the Catalan Government denied that the Mossos d'Escuadra had fired any anti-riot projectiles but attributed the impact to a stone that could have been thrown by one of the "people in hoods". However, Ester's lawyer told Amnesty International that according to one of the nurses who looked after her, the wound showed no signs of glass or of dirt. It was a "smooth wound commensurate with the impact of a rubber ball", as was corroborated by the forensic medical report by doctors who have reported to the judge in charge of the investigation which, following a criminal complaint by Ester, was opened in December 2012 in connection with a criminal case against the police.

A few days after the session at the Catalan Parliament, images available and posted on the Internet showing an officer using a launcher forced the Councillor of Interior to admit the possibility that rubber balls had been fired. He stated that he was not aware of a complete

report into the events of that night, and laid the blame on an error in the chain of command for not having a full report on the incidents of that night, nevertheless he still denied that Ester was hit by a rubber ball. As a result, the then Head of Operational Resources of the Mossos d'Esquadra resigned.¹³⁹

In December 2012, the Head of Operational Resources of the Mossos D'Esquadra announced that an internal investigation would be conducted into the events of that day. However, according to Ester's lawyer, when the two officers were questioned (in her presence) four months later in the context of the judicial proceedings, they stated that they had thus far not been questioned about the events by their superiors, which would normally be expected as a necessary element of an internal investigation.

At the time of writing this report, the judicial investigation into these events is in progress, with two officers formally charged with causing serious bodily harm. Ester's lawyer told Amnesty International that she was disappointed that the investigating judge and the public prosecutor had delegated the task of carrying out the investigation to the same police institution to which the two officers belong (Mossos d'Esquadra). In her view, this called into question the reliability of the investigation and she questioned whether its outcome would reflect a true and complete account of the facts. In this connection, Ester's lawyer referred to the problem of the high cost of seeking independent technical reports, which means that it is not always feasible to obtain second opinions. She also expressed concern at what she considers the "political side" of the case, that is, that the public image of the Councillor and the police could be damaged if the case against the two officers were to result in their conviction.¹⁴⁰

Ester told Amnesty International:

"Ten months later, I have suffered four operations, not only in the eye. Due to the impact of the rubber ball, I have a deformed nasal septum, injuries in my mouth and my ear, and have lost sensation on the left side of my face. I am still under psychological treatment, my daily routine has been affected, as well as the way I am connected with people, how I am seen by them. I've been denied any kind of social benefits I have applied for."

The *associació STOP Bales de Goma*, based in Catalonia, has reported many cases of serious injury as a consequence of the impact of rubber balls used by law enforcement bodies when policing assemblies, and has called for their use to be prohibited.¹⁴¹ When Ester Quintana lost her eye due to the impact of a rubber ball, the association launched a campaign on this point. Partly as a result of the injury to Ester and of that campaign, on 27 February 2013, a majority of the Catalan Parliament approved the establishment of a committee to study models of public order and the use of anti-riot equipment, particularly rubber balls, by the Mossos d'Esquadra. The committee started work on 26 April. On 26 November 2013, the committee made public its conclusions, which included a recommendation to prohibit the use of rubber balls.¹⁴²

CONSUELO BAUDIN

Consuelo Baudin, 55 years of age, a homemaker with a son, was hit near her right kidney by a rubber ball fired by the police. Consuelo had gone to demonstrate her solidarity with the

“Black March” which brought together thousands of miners and their families on 11 July 2012 outside the Ministry of Industry in Madrid. This was the culmination of a three-week protest against government cuts that were affecting the coal mining industry. The demonstration ended with a clash between police and some of the demonstrators, with a total of 76 people reported to have been injured – some of them, like Consuelo, by rubber balls – including 33 police.¹⁴³ Video and photo images on the Internet show instances of some demonstrators throwing objects at the police, but the large majority were conducting themselves peacefully. The same videos and photo images show how the police, who were not wearing individual identification, were carrying launchers for rubber balls, and using their batons to beat protesters on the ground who were offering no resistance.

Consuelo told Amnesty International that when she was hit, there was no disturbance going on around her. She recalls that she shouted at the police that the cuts being suffered were also going to affect them. She was not far away from them, she estimates around 30 metres, when she saw one of the officers take out his launcher. She turned instinctively and at that moment was hit by a rubber ball. Consuelo states that she saw how the police officer shot at her directly.

Video footage recorded by media and by individuals present at the demonstration which is available on the Internet shows the moment before and after Consuelo was injured.¹⁴⁴

After receiving the assistance of the emergency services at the scene, Consuelo was taken to the Princesa Hospital in Madrid where she remained for two months. According to the medical report, viewed by Amnesty International, she had been hit in the back, with the impact causing a closed chest trauma in hemithorax with right pneumothorax, right pulmonary contusion, fractured ribs, fractured vertebrae and a lacerated liver. The kidney failure she previously suffered from has been aggravated since this event. She had to remain in intensive care for 40 days and needed mechanical ventilation. As a result, after being discharged from the hospital, she had to stay with a relative as she was unable to look after herself, and she needed a further 20 rehabilitation sessions.

Consuelo told Amnesty International that although she is recovering from the physical effects, she still suffers significant psychological effects. The investigation initiated by the Ombudsman on Consuelo’s case following the family’s complaint to that body remains open at the time of writing. According to what staff of the Ombudsman’s office told Amnesty International, in August 2013, further information was required, given that, despite the medical report from the Emergency Unit (Samur), the Ministry of Interior’s answer to the Ombudsman denied that Samur had attended anyone seriously injured by police action. In September, the Ministry of Interior still had no answers on the case, but informed the Ombudsman that the Ministry of Interior were establishing protocols for the use of anti-riot equipment in demonstrations.¹⁴⁵ Consuelo Baudín’s family also brought a criminal case against the police who had caused the injuries to Consuelo. The case has been provisionally dismissed by the examining judge because, although he considers there is evidence of force used by the police that constituted criminal breach, the identity of the perpetrator is unknown. At the time of writing this report, the decision to dismiss the case has been appealed by Consuelo’s lawyer to the Madrid Provincial Court, which on 5 March 2014 ordered the examining judge to reopen the case.¹⁴⁶

The Basic Principles on the Use of Force and Firearms call on governments and law enforcement agencies to develop a wide range of means and equip police with various types of equipment to allow for differentiated use of force, including self-defensive equipment to decrease the need to use weapons of any kind.¹⁴⁷

Amnesty International is particularly concerned at the use of anti-riot weapons such as rubber balls, which, while they may be termed “less lethal”, can, as shown in this report, cause serious injury, and in some instances have caused death. The excessive use of such weapons is a serious violation of human rights, and their arbitrary or abusive use must be treated as a criminal offence.¹⁴⁸

Spanish legislation does not specifically regulate the use of force by police. Article 5.2 of Organic Law 2/1986 on the law enforcement forces sets out the principles of necessity and proportionality of the use of force by police, principles which are reiterated in Article 26 of a Code of Ethics for the National Police which was adopted in May 2013. Amnesty International requested the Ministry of the Interior for information about the content of the regulations for the use of force by police and training provided to them, but received no response to that request. According to information that Amnesty International received from representatives of the main police union, there are no general protocols on the use of force, although the Ministry of Interior recently issued an internal Protocol on the use of anti-riot equipment in September 2013.

Amnesty International has seen this four-page document, which has not been made public. It states the principles of graduated use of force that should be employed by the police and sets out in brief some technical rules for the use of teargas, smoke grenades and rubber balls. It stipulates how two types of rubber ball cartridges should be fired from distances of up to 15 and 75 metres respectively, and how attenuating devices to reduce their impact are to be used when firing them at short distance. However, the Protocol is not fully consistent in some important respects with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. For example, it states that “rubber balls may be launched against individuals or groups of attackers whose attitude entails a risk for police officers or other citizens, or caused material damage, in order to deter them from their activities, shooting under the basic premise of the least possible harmfulness”.

‘Less lethal’ projectiles should never be used unless strictly necessary, by fully trained firearms officers subject to effective regulation, monitoring and control. They should only be used in order to avoid the use of firearms in self-defence or defence of others against an imminent threat of death or serious injury, and only when less extreme means are insufficient to achieve this objective.

Accuracy is one of the most important attributes of these devices if unintended injuries are to be minimized.¹⁴⁹ For example, rubber ball rounds should not be fired at the ground first – this makes them ricochet in an unpredictable manner, with an increased risk of impact on a vulnerable area of the body, particularly the head or chest, with sufficient energy to cause serious injury. The weapon, when handled and aimed properly, should not pose a risk to impact the head, chest or abdomen of a person, and should not discharge with energy that so high as to cause perforation of a person’s body wall or other unnecessary injury.

Furthermore, before using “less lethal” projectiles, law enforcement officials should give a clear warning of their intent to use such weapons, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident. A system of monitoring and reporting should be activated whenever law enforcement officials use such weapons in the performance of their duties.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in commenting on the use of rubber balls by the Mossos d’Esquadra, recommended that criteria for the use of projectile-firing weapons by police should at least closely correspond to those governing the use of firearms, and their use must be thoroughly regulated and monitored; only specially selected and trained police officers should be allowed to use such weapons, and all persons against whom they are deployed must be examined by a medical doctor; in addition there should always be a thorough debriefing and evaluation of every incident following their use.¹⁵⁰

The Ombudsman, acting on an individual’s complaint to her office about the excessive use of force by the anti-riot police units during the incidents of 25 September 2012 in Madrid, made a recommendation to the Minister of Interior to consider taking the opportunity of drafting a Protocol on Use of Force in mass demonstrations or assemblies in public places, with clear and precise instructions on how and when police officers should use anti-riot equipment and other regulated weapons.¹⁵¹

The Human Rights Commissioner of the Council of Europe, following a visit to Spain in June 2013, has also urged the Spanish authorities to adopt, as a matter of priority, clear and binding regulations on the proportionate use of force by law enforcement agents in the context of demonstrations, including on the use of projectile-firing weapons, in line with the recommendations of the CPT and the Ombudsman (noted above) and the case law of the European Court. He has also urged that continuous training should be provided on the use of weapons with full respect for the principles of proportionality, restraint and minimum damage contained in the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.¹⁵²

6.3 EXCESSIVE USE OF FORCE AND ILL-TREATMENT IN CARRYING OUT ARRESTS

Amnesty International has received several reports of unnecessary, excessive, or abusive use of force during arrests. In particular, the organization has received credible reports of excessive use of force in arresting peaceful protestors who were offering no resistance.

The CPT has underlined that no more force than is strictly necessary should be used when effecting an arrest; furthermore, once arrested persons have been brought under control there can be no justification for them being struck by law enforcement officials.¹⁵³

LEANDRO ACOSTA

Leandro Acosta, a 19-year-old musician of Spanish and Uruguayan nationality, lives with his mother and works in his mother’s bar. He says he had never participated in any kind of protest before he attended the “Surround the Congress” demonstration in Madrid on 25

September 2012, which he did out of indignation at having seen a live television broadcast showing anti-riot police beating a peaceful demonstrator. He was near the police cordon when he shouted out that the anti-riot police were a tool of the system used for beating up the people. At that moment, one officer took hold of his arm and another his head and dragged him inside the police cordon. Seconds later he was surrounded by police. He told Amnesty International:

“I didn’t hit out, I was only trying to stop them from taking me away. I didn’t even have time to think, I did speak angrily to them, asking them if they knew what they were doing.”

Leandro recounted how they were grabbing him from all directions, threw him to the ground and kicked him. After handcuffing him, Leandro says they began to hit him harder, even on his face, including police officers who had not been previously directly involved. He recalls that the police were laughing and asked if he was stoned. Photographers captured the moment he was surrounded by the police officers.¹⁵⁴ One of the pictures shows Leandro surrounded by about 11 police officers who grasp his arms and legs. One of them is behind Leandro’s back and strongly grasping his nose and face.

“They tried to squeeze my testicles and my throat, it was clear that they were enjoying giving me pain... there were pieces of glass, from a broken bottle, and they willingly threw me upon them, so I had a cut on my chest, which started bleeding.”

Leandro was also bleeding from his nose, and had a broken lip. Despite his injuries, Leandro told Amnesty International he received no medical assistance at the scene, where he was left waiting for hours. Other detained demonstrators were waiting with him. He recalls how, one of them had lost three teeth, and another had fainted, due to beatings by police. The group was then transferred to a police station by van.

“During the transfer, as they knew we could not hold ourselves [due to handcuffs], they used the brakes and cut curves in a way to make us fall aside.”

It was several hours before he was seen by medical staff, but not until another detainee protested that he needed medical care. After being examined by the emergency medical service in the police station, he was then taken to the Infanta Leonor Hospital, where his injuries were treated. According to the hospital's medical report, he suffered multiple traumas to his head and face, chest and neck (craniofacial trauma, cervical trauma and closed thoracic trauma). Leandro remained in detention for two days before being brought before a judge, who, after taking his statement and charging him with public disorder, disobedience and resistance to authority, ordered his release pending trial (which at the time of finalising this report had not yet taken place). Leandro has also officially complained about the assault he suffered but as yet no judicial investigations have been carried out.¹⁵⁵ Leandro states that he had no access to his medical report, nor did he receive any kind of analgesic during the time that he was detained, although doctors had recommended this. Leandro’s lawyer told Amnesty International that, in order to obtain the hospital’s medical report, he had to write to the hospital’s patient care department indicating that he needed to have the report in order to bring judicial proceedings against the police.

Instruction 3/2009 of the Office of the Public Prosecutor on how arrests are to be made

refers to the right to liberty, enshrined in Article 17 of the Spanish Constitution as a fundamental right. Paragraph IV sets out the legal and regulatory framework governing the way in which arrests are to be made, recalling that they should be done in a manner that causes the least harm to the detainee, in terms of his or her person, reputation and property. As a basic principle governing the conduct of police officers, Law 2/1986 on Law Enforcement Bodies stipulates the “avoidance, in the exercise of [their] professional duty, of any abusive, arbitrary or discriminatory practice causing physical or moral violence”, and underlines that in exercising the use of force they must act in accordance with principles of proportionality and the exceptional nature of its use.

Despite the fact that Instruction 3/2009 recalls that “movements of detainees, prisoners and convicted persons shall be conducted in a manner that is respectful of their dignity and rights and safe driving”, Leandro and other people detained on different days told Amnesty International that, during their transfer both to the police station and to the courts, they had to sit on benches in the back of a van with no seatbelts. They were handcuffed, and so could not hold onto anything. The driving was abrupt, with much slamming on of the brakes and sharp turns and they could not avoid getting knocked about or falling over. Some individuals stated that, in their view, the driving was done on purpose in order to make them fall and be hit.

6.4 TREATMENT IN POLICE CUSTODY

The people whom Amnesty International interviewed for this report, and who were arrested in the context of demonstrations in Madrid on different days, were taken to the same police station at Moratalaz district in Madrid. Most stated that they were held there for around two days. The ones interviewed by Amnesty International, described the violent and humiliating treatment they received from the officers there, and the long hours they had to stand facing a wall. Some of them also referred to the treatment and verbal abuse they received from a police officer whose physical appearance they described in similar terms.

MANUEL BUSTAMENTE

Manuel Bustamente, 20 years of age, took part in the protest on 25 September 2012. He told Amnesty International that he arrived at the demonstration around 18.30. One hour later, there were some clashes between police officers and protestors in the area of the demonstration where he was. The anti-riot police charged against the protestors, and people ran towards the edges of the street escaping from the police officers. Manuel was on one side of the street when he received a severe blow to the head from one of the police officers. He bumped into someone else and fell to the ground.

“When I fell down, some officers kicked me all over my body. I covered my head and yelled at them to stop; they hit me in the head, left elbow and both knees”.

He was taken to the police station in Moratalaz together with other detainees. At the police station, he was placed with the others facing the wall. Manuel felt ill, and a woman who was also detained told the police. When one of the police officers asked him what was the matter, he said he felt dizzy, sick and had a headache. Another police officer shouted at him, saying that she too had a headache. As he was feeling ill, he leaned his head against the wall. Some

police officers shouted at him, asking if he was going to sleep; one of them pulled him away from the wall so that he could not rest against it. He does not recall when he lost consciousness. When he came round, a doctor from the emergency medical service was there. They took him to the Gregorio Marañón Hospital where he remained on an intravenous drip until 11 that morning and was then discharged. The doctor had diagnosed a cranio-encephalic trauma. The doctors recommended to him that he rest quietly, do nothing of any effort and take painkillers if necessary. However, he was brought back to the cell of the police station where there were many other detainees.

“I needed to go to the toilet, they'd put a lot of fluid into me in the hospital but they wouldn't let me go. I continued to feel ill in the cell, I asked them to give me something for my headache but I was unable to take anything until the forensic doctor gave me something in the court.”

Manuel is facing criminal charges for attacking an officer and public disorder (the case is still pending at the time of finalising this report). He has also made a complaint regarding the treatment he received from the police, but his case has not yet undergone a judicial investigation.¹⁵⁶

Amnesty International is concerned that people whom the organization interviewed indicated that despite having injuries including open wounds, which they had sustained from blows received during arrest or detention, they did not receive medical attention at the earliest possible moment. They also indicated that, when they were taken to the hospital or were checked by medical staff at the police station, the examinations were conducted in the presence of police officers and that, except for specific tests, they remained handcuffed the whole time. Such allegations raise serious concerns about the failure by police to comply with the principle of respect for privacy in the context of medical treatment and about the inappropriateness of restraining people with handcuffs in such a situation.

The Basic Principles on the use of Force and Firearms are clear that, where the lawful use of force is unavoidable, police must ensure that anyone injured or affected receives assistance and medical aid at the earliest possible moment.¹⁵⁷ People deprived of their liberty have the right to be examined by a doctor as promptly as possible.¹⁵⁸ This right is an integral part of the duty of the authorities to protect detainees and respect their right to health. The UN Code of Conduct for Law Enforcement Officials explicitly states that law enforcement officials must ensure the full protection of the health of people in their custody and take immediate action to secure medical attention whenever required.¹⁵⁹ The European Committee for the Prevention of Torture (CPT) has stressed that a doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests. Women have the right to be examined by a female practitioner on request where possible.¹⁶⁰ In order to guarantee confidentiality, all medical examinations of persons in police custody must be conducted out of the hearing of law enforcement officials and, unless the doctor requests otherwise in a particular case, out of the sight of such officials.¹⁶¹ In such situations the use of handcuffs or other instruments of restraint is likely to be necessary only in rare cases.¹⁶²

ELENA

On the evening of 12 May 2012, Elena (assumed name), a 24-year-old student of Spanish Studies, attended a demonstration celebrating the first anniversary of 15M (the demonstration of 15 May 2011 in Puerta del Sol in Madrid). She then went to her father's bar. At around five in the morning, she returned to Puerta del Sol with some friends, where she was waiting to catch the early morning bus home. She estimates that there were around 100 people in the square, mostly sitting in separate groups, when several police vans arrived. Together with 18 others, Elena was arrested.

"I was separated from my friends for a moment, when a blonde policewoman came up to me and said, 'Get out of the square' and pushed me. I answered 'I'm going, just let me find my friends'. At that moment, they grabbed me, pushed me to the ground and dragged me. The police report says I resisted authority and refused to show my identity document but that's not true. My friends tried to help me, they were well-dressed, so did a boy with a quiff; they pushed my friends, they also arrested the boy."

When Elena was brought to the police station she asked to be seen by the medical emergency staff, whose medical report notes minor grazing and bruising to the right cheek, marks from the handcuffs on her wrists and grazing to her knees. She recalls that detainees sat waiting in the corridor for a long time, and started talking among themselves and with the police officers in charge of their custody. Then a police officer arrived and began to give orders; he threatened and insulted the boy opposite her. Elena commented in loud voice that it was very brave to threaten someone when he was carrying a gun:

"The police officer told me he would smash my face in. When I made to get up, he struck me with his hand and knocked me to the ground. I hit my head on the floor and split my lip, the police officer kicked me all over my body, until other officers took him away".

The next day, when Elena was taken to the hearing before the judge, she was formally charged with assault, disobedience and resistance against the police, and was released pending trial. She also told the same judge of the ill-treatment she had suffered and made a formal complaint.

On her release, she went to the Gregorio Marañón Hospital for a medical check. Her lawyer advised her to make sure to obtain a detailed medical report that could be used in the proceedings against the police. She told Amnesty International she had to insist a number of times that her injuries were to be specified in the medical report- The hospital medical report reported not only the minor injuries noted in the first report, made by the emergency staff, but also it stated that Elena suffered slight cranio-encephalic trauma, superficial grazing to the lower limbs, bilateral bruising on both fore and upper arms, bruising to the right infraclavicular region, dispersed grazing of a superficial nature to the upper and lower extremities, post-traumatic cervicalgia and bruising to the right wrist. These injuries are consistent with Elena's allegations.

Elena said to Amnesty International that this incident has been a very traumatic experience.

"I am accused of bodily injury, assault, disobedience and resistance, me, who has never

done anything wrong in my life, I feel very bad about the worry this has caused to my family. Now I'm afraid to go to demonstrations, I try to be more cautious."

In regard to a complaint which Elena made to the judge, stating that she had been subjected to ill-treatment by the police, her lawyer asked the judge to request the CCTV footage, as in the corridor where she was hit by the police officer there was a video camera. She was not examined by a forensic doctor until the middle of September 2012. At the time of finalising this report the judicial investigation is pending and there is no information on whether her request for the judge to obtain the CCTV footage has been accepted.

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment establishes an obligation to treat detainees in a humane manner and with respect for their dignity, and that they must under no circumstances be subjected to torture or cruel, inhuman or degrading treatment.¹⁶³ The exercise of the right to medical care in custody, noted above, is important not only in itself, but also in terms of helping to prevent torture and other ill-treatment and, if it occurs, bringing those responsible to justice.

The CPT, in its most recent report on Spain, specifically noted allegations of ill-treatment of detainees held at Moratalaz. The Committee highlighted the existence of sticks or baseball bats in some of the police stations its delegation visited, including the police station of Moratalaz. It reiterated to the Spanish authorities to remain vigilant in their efforts to combat ill-treatment by law enforcement officials, and in particular, that no more force than strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can never be any justification for striking them.¹⁶⁴

In previous reports on Spain Amnesty International has noted a failure to ensure that detainees are examined by a medical doctor, outside the presence of the police, and inaccurate or incomplete medical reports as factors contributing to impunity for, and the persistence of, ill-treatment of detainees in police custody. It has also noted, as another contributory factor, the lack of systematic video- and audio-recording in areas of police stations where detainees may be present, and called for such recording systems to be installed.¹⁶⁵ More recently, the National Mechanism for the Prevention of Torture (MNPT), in its 2012 annual report, expressed concern at the fact that video surveillance systems have still not been properly established in police stations.¹⁶⁶

6.5. GENDER-BASED DEGRADING TREATMENT

Some of the testimonies received by Amnesty International have highlighted the degrading treatment of women detained in the context of the protests. One of the interviewees commented that while the police used a greater degree of force against men, women were very often subjected to sexist insults. One man interviewed by Amnesty International highlighted that while he was object of physical violence, his female friend was subjected to humiliation, with some officers mocking the photo on her identity document.

MARIA

Maria (assumed name), a 21-year-old student, took part in the demonstration held on 23 February 2013 in Madrid under the slogan of "Citizens' March", a joint gathering of various non-violent protest movements.

The demonstration was called in about 80 cities across Spain to protest against government austerity measures and corruption. In Madrid, four groups came from different parts of the city to gather in the Plaza de Neptuno in front of the Congress of Deputies, where a manifesto was read out. While the demonstration passed peacefully, at 8pm, which was the time at which the authorities had stipulated it should disperse, some people shouted that they were not leaving; hundreds of riot police moved into the area and clashed with protesters, with police charges against groups of protesters, even in places far away from the Plaza de Neptuno. Forty people were arrested and at least 12 people had to be assisted by the medical emergency services.

According to what Maria told Amnesty International, at the end of the protest, she was returning to her car with two friends, in order to go home, when they came up against people fleeing from the anti-riot police. They were frightened and began to run as well. When Maria and her friends could not run anymore because they were exhausted, they sheltered in a restaurant doorway, along with some other people who were also running from the police.

"We did not know what was going on, we had nothing to do with the other people running from the police, but believe me, when you see the anti-riot police running towards you... you run! One of the anti-riot police cornered me against the restaurant door with his arm across my neck and shouted, 'You filthy pig, I saw you throwing stones' a few inches from my face. He then grabbed me by the back of the neck and dragged me to the road shouting, 'I'm going to let you go because you're shitting yourself with fear but next time I'll split your head open.'"

Maria was, nonetheless, taken with other detainees to the Moratalaz police station. An officer got her out of the van with the words: "Come on, Snow White". Maria told Amnesty International that her legs were shaking, and the way in which they took her with her arm behind her back meant she had to crouch down and almost walk in a squat. When she complained, the accompanying police officer replied "You're soft, aren't you?" and forced her to speed up. Maria said her head was spinning, and then the same police officer said, laughing, "You're so soft, all this demonstrating and look at you". Maria had to remain standing facing a wall for a long time.

"I couldn't see, I made an effort and turned, I rested my head on the wall, I looked at him and said, 'I'm going to fall', to which he replied, 'What do you want? Water or sex?' I said, 'Water'."

Maria stated that the police also made jokes about her and about her being a snob participating in demonstrations. She asked to be seen by the medical emergency staff, but nobody gave her any medical assistance. The morning after, a police officer took her statement, and she was able to see her lawyer. She thought she was going to be released, but she was taken to the cell again until the day after, when she was taken together with the others to a hearing before a judge. She was also examined by a forensic doctor. She told Amnesty International that when she complained to the doctor about the treatment and the bruises, it seemed to her that the doctor tried to make excuses for the police.

Maria is charged with being one of the ringleaders of a group of 25 people who were throwing stones, although she says she had never seen any of the others before. At the time of writing

this report, there has been no development in her court case.

6.6 THE TARGETING OF JOURNALISTS DURING DEMONSTRATIONS

Amnesty International is concerned at reports that journalists and photographers covering demonstrations have been the targets of police violence. Since the protests related to austerity measures have increased, various journalists and media have denounced the treatment they have been subjected to, such as insults or beatings from members of law enforcement bodies while carrying out their work of reporting on the demonstrations.¹⁶⁷

In August 2011, the Committee to Protect Journalists (CPJ) and Reporters sans Frontières (RSF) recorded incidents of police violence against journalists covering protests in the context of the 15-M movement and other demonstrations. For example, they reported that Gorka Ramos, a journalist for the news website Lainformacion, was beaten and arrested while covering 15-M protests in front of the Interior Ministry in Madrid on 4 August and charged with disobeying authorities. According to RSF, after he had shown his press identification, a police officer hit him in the stomach, and eleven others then surrounded him and hit him repeatedly all over his body; video footage taken by another media worker served to refute the claims of the police that Ramos insulted them.¹⁶⁸

In November 2012, a television channel denounced the arrest of a freelance camera operator working for them while filming a protest against evictions in Seville;¹⁶⁹ she was arrested and held in detention for 20 hours and charged with resistance against authority, illegal occupation of property, disobedience, injury and damage. A representative of the Spanish Press Association denounced the practice of the police in this and similar cases as a means of preventing footage of “things that are inconvenient”.¹⁷⁰

JUAN RAMON ROBLES¹⁷¹

This 25-year-old freelance journalist told Amnesty International that he has suffered various assaults from police officers while doing his work of observing demonstrations. He has had his equipment broken on a number of occasions, such as when he was documenting the police baton charge in Atocha-Cercanías train station in Madrid during the demonstration held in Madrid on 25 September 2012 under the slogan of “Surround the Congress”.

He filmed the incidents and clashes between some of the demonstrators and the police and what happened when some of the anti-riot police units went into Atocha train station.¹⁷² The footage shows how passengers in the train station who had no apparent connection with the protest were beaten by police officers with their batons. He also witnessed police officers firing what he took to be rubber balls or salvos (blanks) into the station, and the panic this created among travellers, which can be seen on the footage.¹⁷³

Juan Ramón also filmed the moment when some police officers, having noticed the presence of journalists, approached them and demanded they hand over their equipment. He told Amnesty International that, while he was recording, a police officer approached him and asked him to stop recording and identify himself. Despite the fact that he was wearing his press accreditation visibly, the officer insisted he show him his identity documents. He stated that the officer then pulled him under the escalator leading to the platform and hit his video camera, tearing off the microphone.¹⁷⁴

He told Amnesty International that this is not the only incident he has had with the police. There have been various occasions when police officers have shouted at and insulted him, telling him to stop recording when he was filming attacks on arrested protestors. He stated that the night before 14 November 2012, the day of the General Strike, while he was recording a police baton charge, he was hit hard on the back by one of the police officers.¹⁷⁵

Journalists themselves, like any other individuals, have a right to freedom of expression, and as part of their professional function they play an important role in facilitating the exercise of that right by others, including the right of the public to information. The Human Rights Committee has underlined that a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other human rights.¹⁷⁶ In particular, the role of journalists has been shown to be crucial in gathering information, footage or photos about rallies and demonstrations, including action taken by police to ensure public order. It is partly thanks to the work of journalists and photographers that human rights violations, including excessive use of force by the police, have been uncovered and documented in recent years.

International human rights standards, and the OSCE/ODIHR Guidelines specifically, stress the important role played by journalists, in monitoring public assemblies. The press also plays an essential role as “public watchdog” in terms of providing information that can contribute to accountability of members of the law enforcement bodies policing protests; it can also be a source of information which is independent of either the protestors or the police.

In view of this role, journalists must be treated as distinct from participants and be given as much access as possible by the authorities. In cases where public assemblies are dispersed, journalists may also be asked to disperse, but they should not be prevented from observing and recording the policing operation.¹⁷⁷ The obligation on states to respect and ensure the right to freedom of expression includes ensuring the right of the public to receive information; the exercise of these rights can only be restricted if a restriction is demonstrably necessary and proportionate for the protection of national security, public order, public health or morals, or respect for the rights and reputations of others.¹⁷⁸

Accordingly, the Spanish authorities must allow journalists and media outlets to carry out their work without unwarranted interference. All allegations of excessive use of force by police against journalists or other independent monitors must be promptly, independently and effectively investigated.

In 2007, the OSCE Representative on Freedom of Information produced a special report on the treatment of the media during demonstrations. Among his main recommendations were that law enforcement officials must not prevent or obstruct the work of journalists during public demonstrations and that senior officers responsible for police conduct have a duty to ensure that officers are adequately trained as to the role and function of journalists and, particularly, their role during demonstrations.¹⁷⁹

A wide variety of people are involved in journalism, from professional reporters to the authors of blogs and other media who publish in their own capacity in the press, on the Internet or elsewhere. The OSCE/ODIHR Guidelines underline that freedom to monitor public assemblies

should be guaranteed not only to all media professionals but also to others in civil society, such as human rights activists, who might be regarded as performing the role of social watchdogs and whose aim is to contribute to informed public debate.¹⁸⁰

In spite of this, there are many cases of journalists being subjected to restrictions when reporting on events during a protest, or of their cameras being damaged by police without any evident reason beyond the apparent intention to avoid abusive action being recorded. According to the Report of the Platform of NGOs against Torture, Coordinating Body for the Prevention of Torture (Coordinadora para la Prevención de la Tortura), at least 53 journalists (reporters, photographers, cameramen) were injured during 2012 in different Spanish towns following blows received from police officers while covering social protests. Of these, eight such acts by police took place during those journalists' attempts to record police misconduct against another person. In other cases, the journalists received administrative fines for infringement of the Public Safety Law.¹⁸¹

7. INADEQUATE INVESTIGATION OF HUMAN RIGHTS VIOLATIONS COMMITTED BY LAW ENFORCEMENT OFFICIALS

Together with repeated and credible allegations of the excessive or abusive use of force by law enforcement officials in Spain, there are also reports of persistent impunity in these cases. There is a lack of thorough, impartial and effective investigations into complaints of unnecessary or excessive use of force and other serious human rights violations by law enforcement officials.

In 2007, in a report on ill-treatment and torture in Spain,¹⁸² Amnesty International expressed concern that, while torture and other ill-treatment by law enforcement officials was not routine, it could not, as the authorities held, be characterised as isolated cases perpetrated by a few rogue officers. In response to the authorities' assertions that the overwhelming majority of complaints of ill-treatment made against law enforcement officials were false, the organization recognised that false accusations may sometimes be brought against officers but stressed that the persistent failure to carry out an adequate investigation of 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. In that report Amnesty International criticised the structural weaknesses that were affecting all aspects of the prevention, investigation and punishment of torture or other ill-treatment committed by law enforcement officials. Amnesty International called, among other things, for police officers to be appropriately identified during the course of their duty, as a key step to combating impunity.

In a second report in 2009 updating that of 2007,¹⁸³ the organization found the Spanish authorities were continuing to fail to comply with their obligation under international law to conduct effective, impartial and independent investigations into complaints of human rights violations committed by law enforcement officials. The report showed that victims of torture and other ill-treatment whose cases had been reported in 2007 had still not had an effective remedy, in part because the Spanish authorities were not taking the appropriate steps towards reforming the current system of investigating allegations of serious human rights violations by law enforcement officials to bring it into line with international standards of independence, impartiality and thoroughness. As a result, allegations of ill-treatment by police were still investigated by criminal courts relying heavily on investigators who are members of the same police force as those whom they are investigating.

International law requires that all allegations of torture or other ill-treatment are promptly, thoroughly, impartially and independently investigated, that victims have access to an effective remedy and receive reparation, and that those responsible are brought to justice.¹⁸⁴

Moreover, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials expressly stipulate that where injury or death is caused by the use of force by police, it should be reported and subjected to an effective review process with independent administrative or prosecutorial authorities in a position to exercise jurisdiction as appropriate. The Basic Principles also underline that governments have an obligation to ensure that arbitrary or abusive use of force by police is punished as a criminal offence.¹⁸⁵

In order to comply with their obligation to ensure an effective remedy for human rights violations, states must provide effective complaints mechanisms, but even without an express complaint by the victim, there must be a prompt, impartial and effective investigation whenever there are reasonable grounds to believe that an act of torture or other ill-treatment may have taken place. The Human Rights Committee and the European Court have made clear that a failure by a state to investigate allegations of torture or other ill-treatment is a violation of the right to an effective remedy and the right not to be subjected to torture or other ill-treatment.¹⁸⁶

Law enforcement officials suspected of torture or other ill-treatment should be suspended from active duty during the investigation. The investigation should include a medical examination. A person who has been subjected to torture or other ill-treatment is entitled to adequate reparation, including compensation, rehabilitation including medical and psychological care and social and legal services, satisfaction, and guarantees of non-repetition.¹⁸⁷ The state must also ensure that the investigation is capable of leading to the identification and bringing to justice those responsible, and that those who are convicted receive penalties commensurate with the gravity of the violation.¹⁸⁸

While criminal proceedings against individual officers are a key element in combating impunity for human rights violations, they are not alone sufficient to ensure accountability and non-recurrence of violations. It is also necessary to establish effective administrative investigations to look into institutional responsibility and to identify underlying organizational factors, such as lines of authority within the institution of the police, procedural rules, training, and to determine the necessary disciplinary, administrative and other corrective measures to be taken in order to ensure non-repetition of such violations. Effective measures must also be put in place in order to ensure that those who are victims of human rights violations by the police receive prompt and adequate reparations, including compensation, which should not be dependent on the criminal conviction of individual officers concerned or on the victims pursuing a civil claim through the courts.

7.1. IDENTIFICATION OF OFFICERS

One factor that contributes to impunity for abusive use of force or other human rights violations is that officers cannot individually be identified. With regard to the National Police, both Law 2/1986 and, expressly, Instruction 13/2007 of the State Secretariat for Security require uniformed officers, including those of the Special Police Intervention Units (Unidades Especiales de Intervención Policial- UIP), that is, the riot police, to be correctly identified. During his appearance before the Interior Committee of the Congress of Deputies in June 2012, the then State Secretary for Security said, in answer to a parliamentary question relating to complaints of a lack of correct police identification, that he had reminded the police of the requirement to carry identification and, referring to cases when uniformed police had acted without wearing identification tags on their uniforms, said: “.. if this has

happened it has been through ignorance not malice [of the officers].”¹⁸⁹

A year later, in April 2013, the 15M Legal Committee submitted a document to the Ministry of the Interior accompanied by abundant photographs and video footage showing that police officers were not correctly wearing their identity badges while policing demonstrations, and requesting the opening of disciplinary proceedings in this regard. In May 2013, the current State Secretary for Security replied to them in a brief letter that disciplinary proceedings could not be opened because it was not possible to identify the officers concerned.

Amnesty International has in recent years repeatedly raised concerns that, despite the requirement that all serving uniformed police officers wear identification, this often does not happen in practice.¹⁹⁰ The organization considers that the failure to take action against police officers who do not wear their identity badge encourages a climate of impunity instead of sending a clear message that ill-treatment and excessive use of force will be dealt with by disciplinary and criminal proceedings as appropriate.

Even when officers do wear an identity badge, Amnesty International’s observers in the 12M demonstration, organized by the 15M movement in Madrid on 12 May 2013, noted that, because of the small typeface and the colour (gold with black lettering) it is very difficult to read. The Ombudsman has approached the Ministry of the Interior about numerous complaints on this point received from members of the public and has recommended that the Ministry ensures not only that officers wear identification but that it is easily visible to the public and can be read from “a safe distance” that is, as established in Instruction 13/2007, it must be visible at a distance of approximately 120 cm.

The public authorities responsible for security have also explained that in the case of the anti-riot police units of the National Police or the Mossos d’Escuadra, the identity badge may not be visible because of the additional equipment such as anti-trauma vests they need to wear. Both the Ministry of Interior and the Government of Catalonia have announced that the vests should also bear a numeric code both for National Police and Mossos d’Escuadra anti-riot (intervention) units. The Ministry of the Interior agreed an increase in the size of the intervention units’ numeric code only in respect of the numbering they bear on their additional garments, such as anti-trauma vests, but not to an increase in the size of the normal identity badge that all police officers must wear.

Moreover, the number on the anti-trauma vests, which is only on the back, is not the regular police identity number assigned to the police officer, but a different number assigned within the intervention unit, it is also rather long (six or nine digits), and therefore quite difficult to memorise.

7.2. LACK OF TRANSPARENT INVESTIGATION

In the case of two of the demonstrations described above where there were allegations of excessive use of force by police, the authorities have indicated that there would be some kind of investigation, but there has been no substantive outcome.

LACK OF INFORMATION ON INQUIRY INTO EVENTS IN CATALONIA SQUARE ON 27 MAY 2011

Following the police baton charge in Catalonia Square on 27 May 2011, and after submitting a report that included about 390 complaints regarding excessive use of force, the Sindic de

Greuges¹⁹¹ called on the Autonomous Catalan Government to conduct an internal investigation into the disproportionate use of force and, where appropriate, to punish those responsible. Amnesty International also approached the then Councillor of the Interior of the Autonomous Catalan Government, Felip Puig, calling on him to conduct an investigation into the events. The organization received a response from the Councillor of the Interior in which he recognised that there may have been problems with the way the police operation was implemented, and announced that he was going to order a detailed analysis in order to examine what happened and avoid a repetition of mistakes. However, responding to the point that relevant international law and standards should be applied at all times, he indicated that the highest mechanism of accountability was his appearance before democratically elected representatives in the Catalan Parliament.¹⁹² At the time of writing, Amnesty International has not been able to establish whether the announced investigation was conducted and what its results were.

NO PUBLIC RESULTS OF THE ANNOUNCED INTERNAL INVESTIGATION INTO THE ALLEGED EXCESSIVE USE OF FORCE ON 25 SEPTEMBER 2012

The people's march under the slogan of "Surround the Congress", called by the *25S Coordinating Body* and the *Plataforma En Pie* ('Stand Up Platform'), which took place on 25 September 2012 in Madrid, ended with police baton charges against the protestors. One of the most serious episodes, as briefly referred in section 5.5, occurred inside Atocha-Cercanías station, one of the busiest train stations and interchange stations for commuters in Madrid. Following clashes between police and demonstrators, a group of police entered the station, apparently to pursue fleeing protestors. Images and video material posted on the Internet show how the police officers, along with private security guards, were using excessive force. Officers burst into the train station using their anti-riot weapons causing panic among the people in the station who were shouting in alarm. The footage shows an officer pushing a person down the stairs, in another instance police officers using batons to hit some people who were peacefully standing on the platforms waiting for the trains, and officers shooting from one platform to another – it is not clear whether with rubber balls or salvos (blanks) – while people there were shouting and running. All this was taking place on the platforms of the station next to moving trains, putting people at risk.¹⁹³

On 4 October, the Ministry of the Interior made a public announcement that there would be an internal investigation into the events of 25 September. On 9 October, Amnesty International wrote to the Minister of Interior asking for an independent investigation into the excessive use of force, and especially into the events within Atocha-Cercanias train station. Amnesty International called for the results of this investigation to be made public, along with information on the commencement of any resulting disciplinary proceedings, particularly in relation to the police charge.¹⁹⁴ The organization also noted that none of the uniformed officers appeared to be wearing a visible identity badge, and called on the Minister to take disciplinary measures with regard to those uniformed officers who had not been wearing identification.

On 28 December 2012, in response to Amnesty International's letter sent in October, the Chief of the Cabinet of the State Secretariat for Security, (the second level authority of the Ministry of the Interior) merely listed the legislation governing police duties. With regard to the identification of police officers, the reply justified the lack of visible identification by referring to the need to use anti-trauma vests because of objects being thrown at the police.

With regard to the use of anti-riot equipment, it simply referred generally to the use of this kind of equipment in other European countries. The ministry made no specific response to Amnesty International's call for an independent inquiry.

Amnesty International sent a follow-up letter in January 2013 requesting information on the methodology and findings of the internal investigation,¹⁹⁵ to which the Chief of the Cabinet of the Ministry of the Interior replied in February 2013, saying "The law enforcement bodies exercised the powers given them by the Constitution in these cases with absolute diligence, trying to prevent the action of violent groups, which prevents or impedes the free and peaceful exercise of the right of assembly, as was the case in these demonstrations". Again no information was provided on whether the announced internal investigation on the specific incidents was carried out, under which standards, or if any disciplinary proceedings had been opened against any of the police officers involved.

Around the same time, in January 2013, different media published that according to their sources, the body responsible for the internal investigation, the General Commission of Public Safety, had decided to archive proceedings without any disciplinary measures being taken against police officers involved in the Atocha operation, as it was found that they had not exceeded the permissible levels of use of force. There was no public statement of a Ministry of Interior representative, nor was the report of the findings published. The methodology of such investigation has not been made known.

In May 2013, Amnesty International again requested the Ministry of Interior for information on the investigation. In November 2013, the Secretariat of State for Security wrote again to Amnesty International, stating that in relation to the incidents in Atocha, a file of classified information was opened with a triple objective: to know what happened, to determine whether the police acted properly, and to determine whether disciplinary procedures should be brought. The investigation was dismissed as no irregularity was observed.

Amnesty International is greatly disturbed by the failure of the authorities to provide adequate information about whatever investigations may have taken place into the allegations of excessive use of force by the police. Under international human rights law any person who has suffered human rights violations has a right to a remedy. This requires among other things that allegations of, in this instance, ill-treatment or excessive use of force by police are effectively investigated and, if the allegations are substantiated, that appropriate disciplinary and criminal proceedings are brought against the officials responsible, with reparations, including compensation, for those who have been injured or otherwise harmed as a result. Moreover, the apparent lack of proper investigations fosters a climate of impunity instead of sending a clear message that ill-treatment will be dealt with by means of appropriate disciplinary and criminal proceedings. This is compounded when the authorities avoid providing substantive information about what, if any, inquiries have taken place and measures that are being taken to ensure non-repetition in the future.

The European Court of Human Rights has developed five principles of independence, adequacy, promptness, public scrutiny and victim involvement for the effective investigation of complaints against the police in relation to death or serious injury as a result of police action (that is, those that engage Article 2 or 3 of the European Convention on Human Rights).¹⁹⁶ There are two principal purposes of these principles: firstly, to ensure that an

individual has an effective remedy for an alleged violation of Article 2 or 3 of the European Convention, and to protect against violation of human rights by providing for an investigative framework that is effective and capable of bringing offenders to justice.¹⁹⁷ The UN Human Rights Committee has likewise underlined states' obligations to ensure the right to a remedy for violations, which entails establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. It has underlined that administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.¹⁹⁸ In cases of torture or other ill-treatment, in particular, there must be an investigation where there are reasonable grounds to believe that such an act may have taken place, even without an express complaint by the victim. Where such investigations reveal that criminal acts have been committed, criminal proceedings must be brought against those responsible. In particular, the arbitrary or abusive use of force by law enforcement officials must be subject to criminal proceedings.¹⁹⁹

7.3. LACK OF ADEQUATE JUDICIAL INVESTIGATION

Amnesty International has been informed of cases in which judges did not commence investigations, even when there were signs of possible ill-treatment, unless victims made a complaint themselves. The obligation to initiate such investigations follows from the obligation on states to ensure the right to a remedy for human rights violations and is expressly stated in international treaties which Spain is party to, including the Convention against Torture. It has been repeatedly underlined by international human rights monitoring bodies such as the UN Committee against Torture and the CPT. It is also a preventive measure: one of the most effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination of all complaints of such treatment and, where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties. Even in the absence of an express complaint, there must be an investigation if there are other indications of ill-treatment.²⁰⁰ The CPT, in particular, has repeatedly stressed the role of judicial and prosecuting authorities in combating ill-treatment by the police, and that even in the absence of a formal complaint, such 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.²⁰¹

Recently, The Council of Europe Commissioner for Human Rights has also noted that investigating judges appear to rarely undertake investigations on their own initiative into cases of alleged ill-treatment and tend not to examine evidence that could substantiate such allegations.²⁰²

SERGIO'S CASE:

On 13 July 2012, Sergio, 33 years of age and unemployed at the time, attended a protest outside the offices of the Popular Party in Barcelona with his wife and son to protest against the recent cuts. Sergio told Amnesty International that he approached the Mossos d'Escuadra who were in front of the party's offices and said to each officer 'your children will be hungry just like mine'. Sergio admits that he insulted them but on no point was he physically aggressive towards them. At around 11pm that night, and on his way home, he was about to enter the Ronda Universitat metro station, about two and a half kilometres from where the previous incident had occurred, when two men who he later realised were plain clothes police officers jumped on him. The uniformed police officers who had seen him at the protest earlier that day arrived soon after, when the plain

clothes officers left the scene. According to his account, the uniformed police tackled him from behind, pulling him to the ground, beating him and verbally insulting him. Sergio was arrested and charged with insults, threats, damage and resistance to authority. Sergio filed a complaint for ill-treatment against the police officers. The judge who dealt with the ill-treatment file, the same one who was also handling the charges against Sergio, dismissed the case against the police. The judge's decision stated that the procedural position of the detainee could not be ignored, and so his testimony could not be viewed objectively or impartially. The judge considered that his complaint was with the clear aim of revenge in order to defuse the charges against him since *"I cannot understand what reason would bring public officials to invent the perpetration of crimes in order to attribute them to someone they don't even know, thus absurdly risking one of the most precious assets in society at the moment, their stable jobs."*

Criminal investigations into allegations of ill-treatment are undertaken by investigating judges with the assistance of the judicial police (that is, the police acting under the supervision of the investigating judge). As there is not a specialised and independent police body in charge of investigating such cases, in some instances the investigating judge will request that evidence is gathered by officers from a police force different to that being investigated, but this is not standard practice or mandatory. Amnesty International has documented a pattern where complaints against the police are frequently provisionally dismissed by investigating judges immediately or after only 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 and witnesses.²⁰³

In 2012, Amnesty International published a report which included two cases of excessive use of force in the context of demonstrations in Spain, each of which was the subject of a criminal complaint against the police.²⁰⁴ As in the case of Consuelo Baudín (see above, section 6.2), both were dismissed because the police officers could not be identified, despite there being evidence of excessive use of force by police. The victims did not receive any compensation.

Some of the victims interviewed by the organization have complained that criminal proceedings against police officers are very slow, in some occasions despite a complaint being made of ill-treatment; moreover, and despite information being provided – such as a list of police officers who were on duty at the time – to facilitate the identification of individual officers, cases have been dismissed following only minimal investigation. Amnesty International has interviewed lawyers acting for people who have brought criminal complaints against the police, and these lawyers have expressed the view that in cases of complaints of police ill-treatment, the response of the public prosecutor has been inadequate, sometimes even to the extent of in effect acting in defence of the police officers. Due to the lack of adequate rigour by both judges and public prosecutors in pursuing cases, the initiative is left in many cases to victims to press for the criminal investigation to be pursued.

CASE OF CATALONIA SQUARE: THREE YEARS LATER, NO RESULTS FROM THE JUDICIAL INVESTIGATION

On 27 May 2011, Catalanian police intervened in Catalonia Square, Barcelona, to disperse demonstrators belonging to the 15M movement, who had been peacefully occupying the square for several days. During the operation, police used excessive force. Numerous video images, made available on the Internet in the days following the police operation, showed Mossos d'Esquadra repeatedly using their batons against apparently

peaceful protestors and firing rubber balls and tear gas canisters in their direction. In the same images, some protestors appeared injured, with blood on their hands or head, shortly after having been hit. Official figures report that 84 protestors and 37 police officers were injured. One lawyer who assisted affected demonstrators told Amnesty International that a total of 180 people had suffered injury, but only some 50 of them had obtained medical reports documenting those injuries.

Amnesty International documented the cases of four people who suffered injuries as a result of the excessive use of force by law enforcement officials in the context of this police operation. These included Xavier Mir Bernadó, a 47-year-old international development consultant, and others who told Amnesty International that, on the morning of 27 May, the Mossos d'Esquadra repeatedly beat them with batons despite the fact that they were demonstrating peacefully and had at no point assaulted the police officers; as a result of this they were injured. The reports issued by medical staff present on the square, as well as footage and pictures in the public domain, corroborated their allegations. However, almost three years after the events, victims are still waiting for an adequate investigation to be conducted, for those responsible to be held to account, and for adequate reparation.

A judicial investigation was opened following a joint complaint submitted by 55 complainants, all alleging that Mossos d'Esquadra had assaulted them during their dispersal from the square. However, the complaint was dismissed by the judge in March 2012. The reasons given for the decision include that the court was unable to open the link to the online location of many of the images provided by the complainants, and that, while it was noted that acts of violence by police had taken place, it was not possible to identify the officers responsible for violence portrayed in the available footage. The decision was appealed to the Provincial Court, which upheld the appeal on the basis that the examining judge had not provided sufficient reasons for closing the file and denying the plaintiffs' request to examine further evidence, including the testimony of police officers who had been indicated by complainants as having been responsible for abuses. However, on 4 February 2013, the examining judge again denied requests to examine further evidence, and in the only individual case where a complainant had recognised the alleged perpetrator who had used violence against him, the examining judge authorised the indictment of the police officer concerned only for minor offences, but the case was eventually dismissed. The decision was appealed again by the complainants, but this time, on 17 October 2013, the Provincial Court dismissed most of the claims.

While the case is still open, actions taken thus far by prosecuting authorities and the judiciary have failed to secure justice for the peaceful demonstrators who were beaten by police in Barcelona on 27 May 2011.

Amnesty International has observed that in some cases, the judges and prosecutors do not accord the same credibility to the testimonies of victims and witnesses as they do to police statements. Several lawyers dealing with complaints about ill-treatment committed by police officers told Amnesty International that in their view, judges and prosecutors, who work with the police on a daily basis, are inclined to afford more credibility to the statements of the police and often dismiss complaints against them without thoroughly investigating them, despite the fact that criminal proceedings do not allow for an assumption of the veracity of the statements by police officers. Very few cases actually make it to court.

COMPLAINTS OF ILL-TREATMENT OF DETAINEES ON 25 SEPTEMBER 2012

On 20 December 2012, 26 of the 35 people arrested during the 25 September 2012 “Surround the Congress” protest in Madrid initiated a joint complaint to the court for injury, illegal detention and torture. In support of the complaint, they provided medical reports, audio-visual material of the events, and their own testimonies.

GABRIEL JIMÉNEZ

Gabriel Jiménez, a student of telecommunications engineering aged 25, was one of those arrested during that demonstration. He told Amnesty International that around 11pm he was with a friend still near Congress, with a few people still remaining there. When he was about to leave, various police vans arrived and the officers began to get into formation. He estimates that there were around 25 vans with a large number of anti-riot police who shouted to people to leave. Gabriel and his friend tried to leave towards the direction of Atocha Square, but the anti-riot police blocked their path, forcing them in the other direction towards Plaza de Cibeles. Behind him he could hear baton charges already occurring. At that moment, he did not have any information about the police charges against demonstrators that were occurring both in Atocha train station and other places.

“The road was closed to the traffic towards Plaza Cibeles, but traffic was restored in the other direction. The anti-riots ran and charged against the people walking on the street, and people started running between the cars, it was dangerous.”

While he was walking, Gabriel was recording and streaming with his mobile phone what was happening. He told Amnesty International that he saw officers beating people who were walking alone and acting peacefully, as the police officers charged in at anyone who appeared to be involved in demonstrating. Gabriel and his friend arrived at Plaza de Cibeles, where there were also many anti-riot police. An officer hit his friend on the elbow with a baton without any apparent reason. Gabriel, who was two or three steps ahead, turned to help her and, at that moment, another officer launched at him, hitting him on the arm with a baton as he raised his hand to shield his face. A police officer also hit him on the back of his head. Some police officers shouted at him to get down on the ground, and then threw themselves at him, breaking the plastic bottle of water he had in his backpack. He saw blood dripping from his face and shouted that he was injured and needed medical assistance. He was taken a few hours later to the hospital, where he needed six staples on his head.

“I heard a policeman shout to surround us with their shields and at that point I became very afraid”.

He was arrested and has been charged by the police with throwing stones, violent resistance and undermining authority, in addition to a crime against state institutions. He denies all these accusations. Amnesty International has listened to the audio recording on his mobile phone, and no resistance to arrest can be heard in it.

At the time of writing this report, the question of which court is responsible for prosecuting these 26 complaints has not yet been resolved. One of the victims’ lawyers whom the organization has interviewed commented that, although the complaint was referred to the same court as was dealing with the criminal cases brought against the complainants, that court did not consider it was competent to take on the case, and referred it to another, which also did not consider itself

competent. The conflict of jurisdiction that has arisen must be resolved by the High Court of Justice of Madrid, and this means that it could take several more months.

The lawyer has no information from the Office of the Public Prosecutor that any investigation has been initiated in relation to the complaint of ill-treatment, although the investigation could be done independently of any decision as to the court which is to hear the case. Moreover, despite the fact that the accused had already told the judge they had suffered ill-treatment when the statements were taken at the hearing in connection with the prosecution against them, the courts took no action on this.

Amnesty International is concerned that the judicial system is failing to effectively investigate complaints of abusive use of force and ill-treatment by law enforcement officials with a view to prosecuting those who commit such violations. The cases described above bear similarities to cases which Amnesty International has documented in the past in Spain where the examining judge has proceeded immediately, following minimal investigations, to close complaints against law enforcement officials. Failure to investigate such complaints effectively not only denies the victims of such violations their right to a remedy, which the state has an international legal obligation to ensure, but by allowing such violations to go unpunished it leads to impunity for perpetrators and the continuation of such violations.

8. REFORMS TO THE CRIMINAL CODE AND THE LAW ON THE PROTECTION OF PUBLIC SAFETY

There have been several statements by Spanish authorities and politicians suggesting the need to further regulate some aspects of the freedom of assembly. For instance, in October 2012, the Government Delegate's Office in Madrid told the media that the Law on Freedom of Assembly was too permissive and that the use of public space should be "rationalised".²⁰⁵

Following such repeated calls and announcements, in the early part of 2013 the government started working on draft bills to amend current legislation, in particular the Criminal Code and the Law on the Protection of Public Safety.

In September 2013, the government presented a bill, which at the time of writing is under discussion in Parliament, to amend the Criminal Code.²⁰⁶ The bill introduces significant changes to the crime of public disorder. Amnesty International is concerned that the new wording may be applicable to conduct that is protected under international human rights law, in particular the exercise of the right to freedom of expression and peaceful assembly. It should also be noted that the General Council of the Judiciary (*Consejo General del Poder Judicial*) in its report on the first draft of the bill, commented that the planned measures would lead to an "excessive expansion of the scope of the criminal law".²⁰⁷ Several of the amendments proposed will have the effect of extending the range of punishable behaviour in the context of demonstrations, increasing the severity of the punishments which can be imposed and reducing the procedural guarantees available to those accused of them.

In particular, the bill would amend the articles of the Criminal Code dealing with obstructing authority and public order offences.²⁰⁸ The amended version of the offence of invading or occupying the offices of corporate entities would not require the intent to cause a breach of the peace, which is a required element of the offence under Article 557 of the current Criminal Code. The explanation given by the government is that the entry into premises or establishments in a way that disrupts their normal activity – even if no act or threat of violence or damage has taken place – is to be considered as an attenuated form of public disorder.²⁰⁹ The amended version of the offence of interrupting telecommunications or public transport in a way which alters their normal functioning would not require the element of causing damage, which is a required element of the offence under Article 560 of the current Criminal Code. The amendments would thereby introduce into the Criminal Code non-violent acts of public disorder.

The bill provides for certain crimes to be treated as aggravated and therefore punishable with a higher penalty (of between one and six years' imprisonment) when, among other things, they take place in the context of demonstrations or large assemblies. This is a change from the provision in the current Criminal Code (Article 557), which applies only to mass events or those where public disorder could put those present at risk. In the proposed revision, public

disorder could be treated as aggravated if it takes place in the context of any demonstration, irrespective of the number of people involved in the demonstration.

The bill would also amend articles relating to the crime of obstructing authority. The proposed new definition omits the adjectives “active” and “serious” resistance to authority, present in the current wording of the Criminal Code (Article 550). Amnesty International is concerned that this new wording would be applicable to minor acts of disobedience, including those which take the form of passive resistance, and would treat them on an equal basis with serious acts of resistance to police authority, including those which may involve violence, although the wording is not entirely clear.²¹⁰

Amnesty International is concerned at the vagueness of some of the wording of these new or amended offences, which does not appear to meet the requirement of legal certainty, that laws should be formulated with sufficient precision that “a person can regulate his or her conduct accordingly”, as noted by the UN Human Rights Committee in the particular context of laws imposing restrictions on the exercise of the right to freedom of expression.²¹¹ Moreover, public protests, by their very nature, often entail disruption to traffic and the ordinary use of public space, and the law should not criminalise such disturbances when they occur in the context of the legitimate exercise of the rights to peaceful assembly and freedom of expression and have not involved acts of violence or damage to property or harm to the human rights of others.

The bill would also amend the current Criminal Code by removing the category of crimes classed as misdemeanours.²¹² Currently, and particularly relevant to the issues which are the subject of this report, a minor breach of the peace in the context of public events and meetings is classified as a misdemeanour,²¹³ as are disrespect for the agents of authority and minor disobedience to their orders.²¹⁴ The bill removes these offences from the Criminal Code, and transfers them to the Law on the Protection of Public Safety.²¹⁵ The Law on the Protection of Public Safety, as noted above, provides for very heavy administrative fines and provides less in the way of procedural guarantees for those accused of offences under it, than are available in criminal proceedings.

The transfer of these offences from the Criminal Code to the Law on the Protection of Public Safety means that they would be subject to penalties heavier than those which would be imposed under the Criminal Code, where the judge can take into account the personal financial circumstances of the individual when setting the fine, which is not provided for under administrative law.

Moreover the proceedings for offences under the Law on the Protection of Public Safety do not contain the procedural safeguards which apply in criminal proceedings, where fines are only imposed by a judge after the determination of guilt according to a criminal standard of proof following adversarial proceedings in which both parties are heard on an equal footing. In proceedings under the Law on the Protection of Public Safety there is a presumption that, even if the statement of a police officer is contested by the person facing a fine, the police officer’s statement is a truthful and correct account of the facts which are the basis for the fine imposed.²¹⁶

Amnesty International is also concerned about the government’s proposals for a revised

version of the Law on the Protection of Public Safety. These proposals are set out in a draft bill which is still under consideration by the Council of Ministers prior to being brought before Parliament (and so at an earlier stage of drafting than the proposed amendments to the Criminal Code). This proposal does not address the concerns about the Law on the Protection of Public Safety as it currently stands, described in previous chapters of this report. On the contrary, it would further restrict the exercise of the rights to freedom of peaceful assembly and expression. The proposed revised Law on the Protection of Public Safety would increase the number of offences specified under that law from 30 to 57, with the transfer of certain offences from the Criminal Code (as explained above) as well as the introduction of new offences, some of them directly related to forms of protest carried out in recent years.

The draft revised Law on the Protection of Public Safety omits the obligation of the authorities to protect demonstrations set out in Article 16 of the law as it currently stands.²¹⁷ It would also increase the level of penalties in a way which is likely to have a significant effect on the fines imposed for offences related to participation in demonstrations. This would risk increasing the deterrent effect on many of those who are seeking to exercise their rights to peaceful assembly and freedom of expression, as well as increasing the negative impact on the ability of the social movements to mobilise.

Under the draft revised law, meetings or demonstrations which have not been notified and take place in or near what is considered a “critical infrastructure” (there is no defined list of such places) would also be penalised as a serious offence, even when they do not cause disruption to public order. When the authorities consider that such demonstrations interfere with that critical infrastructure’s normal functioning, the offence would be treated as a very serious offence, subject to a fine that could amount from 30,000 to 600,000 euros. Disturbances to public order caused by unnotified meetings held in front of the Congress or the Senate or the legislative assemblies of the autonomous communities – even if those bodies are not meeting at the time – would also be treated as a serious offence.

Under the draft revised law, fines would be imposed for actions which could include forms of protest that have been recognised by the courts as a form of freedom of expression. These include public statements made by means of any media with the aim of insult or affront to public institutions, authorities, agents of authority or public employees; failure to show respect and due regard to an authority or its officers; and offences or insults to Spain, the autonomous regions and local entities or their institutions, symbols, emblems or anthems. These proposed offences would run counter to Spain’s obligations under international law. The UN Human Rights Committee has underlined the importance of uninhibited expression in circumstances of public debate concerning public institutions, and that states should not prohibit criticism of institutions such as the army or the administration; in particular it has expressed concern regarding laws on disrespect for authority, disrespect for flags and symbols, and the protection of the honour of public officials.²¹⁸

The draft revised law also includes a provision treating as an offence the use of images of members of the security forces which breaches their right to honour, which would be subject to a fine of up to one thousand euros. While the Director General of Police has stated that this proposed provision is aimed at private individuals rather than the media,²¹⁹ Amnesty International underlines that the right to freedom of expression, which includes the right to

receive and impart information, applies not only to professional journalists but to everyone; moreover the capturing of images of the police, whether by journalists or by other individuals on cameras or mobile phones, has sometimes helped to disseminate information about excessive use of force by the police and accordingly can make an important contribution to the accountability of police officers for their actions.

As noted above,²²⁰ Amnesty International is concerned about the vagueness of some of the provisions in the current Law on the Protection of Public Safety. It has similar concerns about some provisions in the draft revised law presented by the government, such as that regarding disobedience to the orders of a police officer or the new provision of “lack of due regard”, which, particularly because of the presumption in the administrative law that statements by police officers are truthful and correct, would effectively expand the wide margin for discretion afforded to law enforcement officials.²²¹

Amnesty International is concerned that some of the provisions included in these proposed amendments could be used as a means of suppressing the right to freedom of expression and of peaceful assembly. Under international law, no restrictions may be imposed on these rights unless they are demonstrably necessary and proportionate for the protection of the rights of others or the protection of specific public interests. The Spanish authorities have an obligation to maintain public order but, in doing so, also to respect, protect and fulfil the right to freedom of expression and of peaceful assembly. Amnesty International considers that the government has not demonstrated either the necessity or the proportionality of the proposed provisions which would affect the exercise of the right to freedom of assembly and of expression. As the government itself has recognised, in only 0.7 per cent of the 14,721 demonstrations policed by law enforcement officials in 2012 were there any acts of violence.²²² And in an opinion poll carried out by the Centre of Sociological Research, a body linked to the Prime Minister’s Office, only 0.2 per cent of the Spanish population expressed concern with regard to the maintenance of public order in Spain.²²³

9. CONCLUSION AND RECOMMENDATIONS

The austerity measures introduced in the wake of the 2008 economic crisis have generated a wave of protests, many led by new social movements. The vast majority of these protests have been peaceful, some have seen isolated outbreaks of violence; some have, on occasion, been uncomfortable for the politicians targeted. The response of the Spanish authorities to these protests, and the movements that spawned them, has been largely repressive. This report documents the abusive use of administrative and criminal sanctions to penalise protesters peacefully exercising their right to the freedom of assembly and the excessive force that police have used against them. The government response has also revealed shortcomings in Spanish legislation regarding demonstrations. Rather than seeking to close these gaps, and shore up the freedom of peaceful assembly, the government has instead submitted legislative proposals that would increase the scope for penalizing protest organisers and participants for peacefully exercising the right to freedom of assembly, in violation of Spain's obligations under international law.

Economic crises always test the strength and stability of societies and their public institutions. These are strengthened, however, not weakened, by allowing frustrations to be vented, criticism to be voiced and calls for change to be made. The peaceful exercise of the right to freedom of assembly is essential to this. Rather than representing the social movements behind many of the recent protests as a threat to society, the Spanish authorities must ensure that their right to freedom of assembly is respected, and the space for protest is not restricted further.

Amnesty international makes the following recommendations for changes to law, policies and practice with a view to ensuring that domestic law and practice complies with Spain's obligations under international human rights law, and in particular that:

- Spain complies with its obligation to facilitate the exercise of the rights to freedom of expression and peaceful assembly;
- policing of demonstrations complies with international law and standards on the use of force by law enforcement officials;
- those who commit human rights violations are held accountable and the victims have access to an effective remedy and adequate reparation.

RECOMMENDATIONS:

ENSURE THE RIGHT TO FREEDOM OF EXPRESSION AND OF PEACEFUL ASSEMBLY

Spanish authorities, particularly the government and the Parliament, should review legislation, policies and practices relating to public assemblies and demonstrations so as to ensure and facilitate the effective exercise of the rights to freedom of expression and of peaceful assembly in accordance with Spain's international human rights obligations.

This includes ensuring that:

- any restrictions placed on these rights are only such as are demonstrably necessary and proportionate for one of the grounds expressly identified in human rights law;
- as a general rule, demonstrations are able to take place with "sight and sound" of their target audience;
- requirements for prior notification are not applied in a way which amounts to a requirement for prior authorisation;
- failure to comply with prior notification requirements does not, on its own, lead to fines for organisers or participants.

They should also:

- stop the use of criminal and administrative law in such a way as to dissuade people from taking part in demonstrations as a means of expressing their views, or otherwise to stifle criticism of the authorities;
- ensure that whenever a person participating in a demonstration is asked by a police officer to produce identification, the officer is required to provide that person with a receipt which, among other things, specifies the reason for the check.

With regard to legislation they should:

- amend current legislation to expressly include exemption from the prior notification requirement in the case of spontaneous demonstrations;
- withdraw or amend the legislative amendments which, as currently proposed, would increase the scope for the criminal and administrative law to be used to restrict and penalise the exercise of the right to freedom of expression and peaceful assembly.

ROLE OF LAW ENFORCEMENT OFFICIALS

Law enforcement officials must comply at all times with international human rights law and standards on policing, in particular the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and in particular must respect, protect and ensure the rights to life, liberty, personal security and physical integrity and to freedom of expression and peaceful assembly and association.

Police rules and training must make clear that torture and other ill-treatment and excessive use of force will not be tolerated and will be dealt with by disciplinary and criminal proceedings as appropriate.

With regard in particular to policing of assemblies:

- law enforcement agencies and officials should communicate with organisers and demonstrators before and during the assembly in order to create mutual understanding, reduce tension and avoid unnecessary confrontation between law enforcement officials and protestors, and to find ways to prevent violence or to stop any such incidents quickly should they break out;
- law enforcement officials must respect the right to freedom of expression of all participants and the right of the public to information, and in particular must ensure that journalists can carry out their work without unwarranted interference, including their work recording and disseminating information about events at the demonstration, including the actions of the police;
- assemblies should not be dispersed simply because they have not complied with prior notification requirements;
- any decision to disperse an assembly should be taken in line with the principles of necessity and proportionality; the order to disperse must be clearly communicated and explained, so as to obtain, as far as possible, the understanding and compliance of the demonstrators, and sufficient time must be given for them to disperse;

USE OF FORCE

If there is violence in the context of an assembly and if the use of force is unavoidable, for example to protect themselves, participants, or bystanders against violence, law enforcement officials must use only the minimum level of force necessary to contain the situation and must comply with the UN Basic Principles.

If a minority in an assembly is carrying out acts of violence, law enforcement officials should respond in a differentiated and proportionate manner and respect and protect the right to peaceful assembly of those who are demonstrating peacefully.

Law enforcement officials must ensure that anyone injured or affected as a result of use of force receives assistance and medical aid at the earliest possible moment, and they must report the incident promptly to superiors who should ensure an effective review, with

independent administrative or prosecutorial authorities in a position to exercise jurisdiction where appropriate.

Clear rules for the use of force by law enforcement officials in the context of policing demonstrations, fully compliant with the UN Basic Principles, should be established and should be made publicly available. In particular there should be clear and precise rules and rigorous training for the use of anti-riot equipment including hand-held batons and “less lethal” projectiles.

With regard in particular to hand-held batons and “less lethal” projectiles:

- hand-held batons and similar impact equipment should not be used on people who are unthreatening and non-aggressive. Where their use is unavoidable, law enforcement officials must avoid causing serious injury; baton blows aimed at the head, neck and throat, spine, lower back, solar plexus, knees and ankles and vital parts of the body should be prohibited;
- “less lethal” projectiles such as rubber balls should never be used unless strictly necessary in defence against an imminent threat of death or serious injury, and only when less extreme means are insufficient to achieve this objective. They should be used only by fully trained firearms officers subject to effective regulation, monitoring and control;
- “less lethal” projectile weapons must not be used in a way that poses a risk of impact to the head, chest or abdomen, and should not discharge with energy so high as to cause perforation of a person’s body wall or other unnecessary injury. In particular, rubber ball rounds should not be fired at the ground first, which makes them ricochet unpredictably with an increased risk of impact on vulnerable areas of the body with sufficient energy to cause serious injury;
- before using “less lethal” projectile weapons, law enforcement officials should give a clear warning of their intent to do so, with sufficient time for the warning to be observed, unless that would unduly place themselves or others at risk of death or serious harm, or would be clearly inappropriate or pointless in the circumstances;
- the authorities should establish a system of monitoring the use of “less lethal” projectile weapons, which should include a requirement on law enforcement officials to report whenever they make use of them;
- the authorities should establish an independent inquiry, open to public scrutiny, to examine allegations of serious injuries caused by the use of rubber balls. It should include independent medical, scientific, and judicial experts to study and report on the dangers of “less lethal” incapacitating weapons and to make recommendations for the effective regulation and the lawful deployment and use of such weapons with a view to increasingly restraining the use of weapons capable of causing death or injury. As well as preventing the arbitrary, abusive and excessive use of force;

SAFEGUARDS IN CUSTODY

All persons taken into custody must have prompt access to a lawyer and their right to consult

a doctor must always be respected.

Measures must be put in place for systematic and comprehensive video and audio recording in all areas of police stations where detainees may be present, except where this would violate the detainee's right to privacy or to confidential communications with their counsel or a doctor. Recordings should be kept in a secure facility for a reasonable period of time and available for viewing by investigators if so required.

All law enforcement personnel must ensure that assistance and medical attention are rendered to any injured or affected person in their custody whenever necessary, and that a doctor should always be called without delay if a person in police custody requests a medical examination; police officers should not seek to filter such requests. Women have the right to be examined by a female practitioner on request where possible.

Any use of handcuffs or other restraints during a medical examination should be only in rare cases where it is demonstrably necessary and, if used, the reasons must be stated to the individual concerned and formally recorded in that individual's custody record.

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. The report of the medical examination should reflect statements made by the individual as to how their injuries occurred and the examiner's evaluation as to the consistency of the injuries with those allegations, and must be made available to the individual concerned.

ACCOUNTABILITY

Regulations must be established and enforced to ensure that law enforcement officials comply at all times with the requirement to wear visible name or number tags to enable individual identification; this includes when police are wearing protective or other special gear such as helmets or anti-trauma vests.

Any use of force by law enforcement officials should be subject to review. Where such review indicates that there may have been excessive use of force, or if there are such allegations, there must be a prompt, independent and impartial investigation. If the investigation finds that there has been excessive use of force, those responsible must be subject to criminal and disciplinary proceedings as appropriate. Arbitrary or abusive use of force by law enforcement officials must be treated as a criminal offence.

Any complaints of torture or other ill-treatment must be promptly, impartially and effectively investigated, an obligation which applies even in the absence of an express complaint whenever there are reasonable grounds to believe that act of torture or other ill-treatment has taken place. The investigation must include a medical examination and must be capable of identifying and bringing to justice those responsible, with penalties on conviction commensurate with the gravity of the violation.

Law enforcement officials under investigation for torture or other ill-treatment or other serious human rights violations should be suspended from active duty during the proceedings.

The authorities should establish specialized units of the Public Prosecution Office responsible for investigating allegations of criminal conduct by law enforcement officials, and take effective steps to ensure that the close cooperation between the Public Prosecution Office and the police on general criminal matters does not undermine its independence or impartiality in investigating and prosecuting such cases.

In order to comply with Spain's international obligations to ensure that victims of human rights violations by law enforcement officials have access to an effective remedy and obtain adequate reparation, including compensation, rehabilitation, satisfaction, and guarantees of non-repetition – an obligation which applies irrespective of, and is not dependent on, the perpetrators being identified or prosecuted – the authorities must ensure that there are effective mechanisms to investigate complaints.

To this end, they should establish an independent body to examine complaints against law enforcement officials, with adequate resources to effectively carry out its work and the powers and authority, among other things, to:

- establish a system to monitor the use of “less lethal” projectile weapons, which should include a requirement on law enforcement officials to report whenever they make use of them;
- receive, register and investigate complaints filed directly by any individual;
- investigate incidents on its own initiative, in the absence of any specific complaint;
- conduct investigations into alleged human rights violations by law enforcement officials, including powers to compel law enforcement officials to attend interviews or to respond to questions put to them or requests for information in the context of such investigations;
- refer cases directly to the prosecuting authorities for criminal prosecution where appropriate, and to appeal to a court against any decision made by the prosecution authorities, including decisions to suspend or close investigations;
- order disciplinary proceedings to take place and to require the disciplinary body to report back to it on the result of those proceedings;
- issue public reports of its work.

The internal inspectorates of the National Police and Civil Guard and the Basque and Catalan police forces should publish full annual reports (if necessary making personal details anonymous), which should include information about complaints made against law enforcement officials and the steps taken in response to such complaints.

ENDNOTES

- 1 The name Marea Blanca refers to a number of demonstrations being carried out in protest at the privatisation of the health system and the cuts taking place in provision of health care in the public health system. It is a movement that has a presence throughout most of Spain, with significant involvement by those working in the public health system
<http://sanidadenlucha.wordpress.com/2013/02/18/manifiesto-marea-blanca-estatal-17f/>
- 2 Popular assembly of Carabanchel (a municipality of Madrid), part of the 15M movement.
- 3 Part of the Network of the “Platform of those Affected by the Mortgage crisis” (PAM), organised throughout Spain, against forced evictions for unpaid rents or mortgages, which organised peaceful acts of resistance in front of the houses concerned in an attempt to stop the evictions.
- 4 Auto de sobreesimienta del Juzgado de Instrucción nº 2 de Móstoles, Madrid, 17 June 2013.
- 5 It stated that the fine would be 301 euros (breach of article 26 h) of Organic Law 1/1992).
- 6 See Section 4.2 for the legal requirements for advance notification of assemblies.
- 7 See Section 5 for a description of the proceedings for administrative penalties.
- 8 Based on an infringement of Art. 23 n) of Organic Law 1/1992 “Giving rise to serious disorder on the public highway or in public spaces or establishments or causing serious damage to public property, unless it constitutes a criminal offence.”
- 9 http://www.youtube.com/watch?v=SFM_WHAeu4A
- 10 The unemployment rate in Spain is at around 26 per cent.
<http://www.ine.es/fmiFrontEnd/fmi.jsp?L=0> visited in April 2014.
- 11 For example, significant cuts in health services, education, as well as welfare.
- 12 Data provided in a written Government's response to a question by Deputies of the Amaiur Group in Congress on 28 October 2013.
- 13 The Government Delegate's Offices represent the central government in the autonomous communities. They coordinate the state's police action in the autonomous communities. Among other competences, Government Delegates are in charge of controlling the formalities for holding demonstrations and rallies, and to penalise activities considered to be in breach of public order, etc. The Government Delegate's Office depends of the Ministry of the Finance and Public Administration but for the issues described above is directly linked to the Ministry of Interior.
- 14 AI Interview with the General Director of the Administration of Security of the Autonomous Community of Catalonia on 1 August 2013. In Catalonia, responsibility for assemblies rests with the autonomous government.
- 15 See Amnesty International reports: “Policing Demonstrations in the European Union”, 25 October 2012, AI Index EUR 01/022/2012, available at <http://www.amnesty.org.uk/sites/default/files/eu-police.pdf>
“Adding Insult to Injury: Police Impunity two years on”, 3 November 2009, AI Index EUR

41/10/2009, available at <http://www.amnesty.org/en/library/asset/EUR41/010/2009/en/677ab6fc-d161-4b86-9284-c4fe612552f8/eur410102009en.pdf>

“Spain: report on seminar. Police complaints investigation mechanisms in the Spanish context”, AI Index EUR 41/003/2009, available at <http://www.amnesty.org/en/library/asset/EUR41/003/2009/en/a206ca73-78aa-4cb9-a05a-df73bc547d55/eur410032009eng.pdf>

“Adding Insult to Injury: the effective impunity of police officers in cases of torture and other ill-treatment”, 14 November 2007, AI Index EUR 41/006/2007, available at <http://www.amnesty.org/en/library/asset/EUR41/006/2007/en/1b4ffbafe-d36f-11dd-a329-2f46302a8cc6/eur410062007en.pdf>

16 The 15M movement defines itself as a group of people who spontaneously come together to express their demands, among other things, to ensure a participatory democracy and raise social awareness. It does not consider itself linked to any political party, trade union or association. Its organisers clearly state the peaceful nature of their mobilizations.

17 PAM defines itself as a horizontal, peaceful association and non-party political movement. It aims to raise people’s awareness and bring together people who are affected, as well as to offer advice to those people and facilitate their access to practical and psychological support by means of mutual and self-help measures. Among its campaigns are: “STOP Evictions” (STOP Deshaucios), which organizes passive resistance to foreclosures and eviction notices, including by gathering in the doorway of the residence before bailiffs enter; and the “Payment in kind” (Dación en Pago) campaign, calling for legislative measures to recognize that the handover of a property to a bank must entail the cancellation of the debt arising from a bona fide loan taken out with that bank to buy that property, if it is someone’s main residence.

18 Between May 2011 and November 2013, 15M Legal, a group of lawyers supporting 15M activists in Madrid, recorded at least 1,010 instances of such penalties imposed on people just for participating in demonstrations, amounting in total to more than 320,000 euros.

19 <http://www.catalunyapress.cat/es/notices/2013/05/la-delegada-del-gobierno-de-madrid-el-15m-ha-perdido-apoyo-popular-de-sus-comienzos-79214.php>

20 http://www.ivoox.com/hoy-hoy-3-demayo-primera-hora-audios-mp3_rf_2005855_1.html

21 <http://www.asamblealogroño.com/tag/ayuntamiento-de-logrono/> the video can be seen at <http://www.youtube.com/watch?v=ONiJnuI6his>

22 The report was submitted in December 2012 by the Madrid Autonomous Government, Madrid City Hall and the Government Delegate’s Office in Madrid, on behalf of the central government.

23 The term “anti-systemic” is often used by some officials as a pejorative term to describe social movements who organise protests, conveying the notion that they are radical groups opposed to the prevailing political and social system. In this connection the report refers to a specific form of crime as “squatters or 15M”.

24 Ibid. Page 13.

25 Ibid. Page 10.

26 <http://www.elmundo.es/accesible/elmundo/2013/04/10/valencia/1365575211.html>

27 In June 2013, Ada Colau received the European Citizens’ Price 2013 from the European

Parliament. This award is granted to people or organizations fighting for European values.

28 <http://www.rtve.es/alacarta/audios/el-dia-menos-pensado/dia-menos-pensado-cristina-cifuentes-vincula-plataforma-afectados-hipoteca-grupos-filoetarras/1733370/>

29 <http://www.europapress.es/la-rioja/noticia-pr-exige-sanz-cese-inmediato-rio-tuit-nazis-ahora-ada-colau-20130405114821.html>

30 http://www.cadenaser.com/espana/articulo/cospedal-tilda-nazismo-puro-escraches-ciudadanos-politicos/csrcsrpor/20130413csrcsrnac_7/Tes

31 6 May 2013 “Hasta que la PAH no se desvincule de grupos radicales y partidos del entorno de ETA su mensaje no tendrá la validez que buscan. Van por mal camino”.

32 See “Amnesty International concerns about reports of excessive use of force by police against demonstrators”, 7 July 2011, AI Index: EUR 41/008/2011. available at <http://www.amnesty.org/fr/library/asset/EUR41/008/2011/fr/430d9063-df3c-45be-b9df-41dd16640982/eur410082011en.pdf>

33 Amnesty International Spain appearance before the Special Commission in the Catalonia Parliament for the study of Models of Security and Public Security and the use of anti-riot material, 17 September 2013.

34 Iñigo Cavacas died on 5 April 2012 in the city of Bilbao due to the impact on his head of a rubber ball shot by a police agent of the Ertzaintza (Basque Police) during a dispersal of a crowd after a football match between the local football club, Athletic, and the German football club Schalke. <http://www.es.amnesty.org/noticias/noticias/articulo/amnistia-internacional-pide-al-estado-que-se-revise-la-utilizacion-de-las-pelotas-de-goma-por-toda/espana>

35 Article 10.2 Spanish Constitution: The rules on fundamental rights and freedoms recognized by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and the relevant international treaties and agreements ratified by Spain.

36 Article 21; see also Article 25.

37 Article 11.

38 Article 12.

39 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, reports to the Human Rights Council, A/HRC/20/27, para. 27, and A/HRC/23/29, para. 49.

40 Office of the High Commissioner for Human Rights: Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, UN Doc A/HRC/22/28, 21 January 2013.

41 UN Human Rights Council, resolution 22/10, the promotion and protection of human rights in the context of peaceful protests, adopted without a vote, 21 March 2013.

42 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Peaceful Assembly, 2nd Ed (2010), referred to hereafter as OSCE/ODIHR Guidelines.

43 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, report to the Human Rights Council, A/HRC/20/27, footnote 7.

44 See, for example, OSCE/ODIHR Guidelines, p. 23, para. 2. See also European Court of Human Rights, *Djavit An v. Turkey*, No. 20652/92, 9 July 2003 para. 56.

45 See, for example, UN Human Rights Council Resolution 24/5, A/HRC/RES/24/5, adopted without a vote 26 September 2014, para 5, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/24/5.

46 See, for example, *Sergey Kuznetsov v. Russia*, N. 10877/04, 23/01/2009, para. 35; *Djavit An v. Turkey*, N. 20652/92, 20 January 2013 para. 56; *Ezelin v. France*, N. 11800/85, 26 April 1991, para. 52; and *Christians against Racism and Fascism v. the United Kingdom*, N. 8440/78, Commission decision of 16 July 1980, Decisions and Reports 21, p.138, at p. 148.

47 See, for example, OSCE/ODIHR Guidelines, Guideline 3.5.

48 Article 21.1: “[...] The exercise of this right shall not require prior authorization.”

49 SSTC 124/2005 of 23 May, 195/2003 of 27 October, 42/2000, of 14 February, 66/1995, of 8 May, and 55/1988, of 28 April.

50 Organic Law 9/1983, of 15 July, regulating the Right of Assembly, available at http://noticias.juridicas.com/base_datos/Admin/lo9-1983.html

51 <https://www.boe.es/boe/dias/1992/02/22/pdfs/A06209-06214.pdf>

52 See Article 21 ICCPR, Article 11(2) European Convention on Human Rights.

53 Article 5: The government authority will disband and, where appropriate, proceed to dissolve assemblies or demonstrations in the following cases

- a) when they are considered unlawful under criminal legislation.
- b) when public order is disrupted, with danger to people and property.
- c) when the attendees are wearing paramilitary uniforms.

Such decisions will be notified in advance to those present, in the manner stipulated by law.

54 Article 10: If the government authority considers there are reasonable grounds to believe that disruption may occur to the public order, with danger to persons or property, then it may prohibit the assembly or demonstration or, where appropriate, propose a change to the date, place, duration or route of the assembly or demonstration. The decision must be presented in a form setting out the reasons and must be notified within a maximum of 72 hours of the notice given in Article 8, in accordance with the requirements of the Law on administrative procedure.

55 Article 11: Should the ban or other proposed amendments not be accepted by the organisers or promoters, they may submit an administrative appeal to the relevant court, within a period of 48 hours, providing a copy of said appeal, duly registered, to the government authority so that this body can immediately send the file to the court. The Court will consider this appeal in accordance with the provisions of Art. 7.6 of Law 62/1978, of 26 December, on jurisdictional protection of the fundamental rights of the person

56 See, for example, Human Rights Committee, General Comment 34 on Freedom of opinion and expression, CCPR/C/GC/34, paras 21-36, and specifically paras 21 and 22. (The Committee has clarified that this general comment also provides guidance with regard to elements of the right to freedom of peaceful assembly – see Communication no 1790/2008 *Govsha, Syritsa, and Mezyak v Belarus*, Views adopted 27 July 2012, para. 9.4).

57 See, for example, Human Rights Committee, General Comment 34, para. 27.

58 Report to the Human Rights Council of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, para. 50.

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- 59 OSCE/ODIHR Guidelines, para. 25.
- 60 See European Court of Human Rights, *Bukta and Others v. Hungary*, N. 25691/04, 17 October 2007, para. 37, *Oya Ataman v. Turkey*, N. 74552/01, 5 March 2007, paras 41-42.
- 61 See OSCE/ODIHR Guideline 3.2. See also European Court of Human Rights, *Patyi and Others v. Hungary*, N. 5529/05, 7 October 2008, paras 42–3, where the Court rejected the government's arguments relating to potential disruption of traffic.
- 62 OSCE/ODIHR Guidelines, Principle 3.5 and paras 99, 101; see also Report to the Human Rights Council of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, para. 60.
- 63 STC 66/1995, of 8 May 1995, FJ 3.
- 64 STC 110/2006, of 3 April 2006, FJ 3 referring to STC 20/1990, of 15 February 1990, FJ 5 and STC 53/1986, of 5 May 1986, FJ3.
- 65 Judgments 218/2013 and 219/2013.
- 66 Article 21.2: In cases of assemblies in the public thoroughfares and demonstrations, these shall be notified in advance to the authorities, who may only prohibit them when there are reasonable grounds that there will be a disruption to the public order, with a danger to people or property.
- 67 Article 8: Assemblies that are to be held in public thoroughfares and demonstrations must be notified in writing to the corresponding government authority by the organisers or promoters, with a minimum of ten calendar days' notice and a maximum of 30. If being organised by legal entity then this notice must be given by its representative. When there are extraordinary and serious grounds justifying the urgency of the assembly and its holding in a public place or demonstration, the notice above can be made with a minimum of 24 hours' notice.
- 68 Article 9.
- 69 Article 10.
- 70 Article 11.
- 71 STC 110/2006, mentioning SSTC 36/1982 and 59/1990 on communication and SSTC 59/1990 and 66/1995 on the configuration of this right.
- 72 STS of 12 December 1994 (Ref. Aranzadi 2716/1995).
- 73 In the Human Rights Committee's Concluding Observations on Morocco [1999], UN Doc. CCPR/79/add. 113, para. 24, the Committee states that it is concerned at the breadth of the requirement of notification for assemblies and that the requirement of receipt of notification of an assembly is often abused, resulting in de facto limits of the right of assembly, ensured in Article 21 of the ICCPR.
- 74 See *Sergey Kuznetsov v. Russia*, N. 10877/04, 23 January 2009 para. 42, *Bukta and Others v. Hungary*, N. 25691/04, 17 October 2007, para. 35; *Oya Ataman v. Turkey*, N. 74552/01, 5 March 2007, para. 39; *Rassemblement Jurassien Unité v. Switzerland*, N. 8191/78, Commission decision of 10 October 1979, DR 17, p. 119; and also *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, p. 12, paras. 32 and 34.
- 75 *Éva Molnár v. Hungary*, No. 10346/05, 7 January 2009, para 37.
- 76 See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of

association, A/HRC/23/39, 24 April 2013, para. 51.

77 Ibid. See also UN Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association A/HRC/20/27 para. 28 and recommendation at para. 90.

78 UN Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 28. See also A/HRC/23/39, 24 April 2013, paras. 51 and 52.

79 See OSCE/ODIHR Guidelines, principle 4.1, Notification, also para. 118.

80 See OSCE/ODIHR Guidelines, principle 4.1, Notification.

81 See OSCE/ODIHR Guidelines, para. 126; see also, European Court of Human Rights, *Éva Molnár v. Hungary*, N. 10346/05, para. 38, 7 October 2008.

82 See OSCE/ODIHR Guidelines, para 127.

83 See OSCE/ODIHR Guidelines, para. 128.

84 See OSCE/ODIHR Guidelines, principle 4.2.

85 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, para. 51.

86 Article 23 c) considers as a serious infringement: Holding meetings in public places or demonstrations, in violation of the provisions of Articles 8, 9, 10 and 11 of the Law regulating the Right of Assembly, that is mainly dealing with notification procedures, which responsibility for falls to the promoters.

87 Article 23 n) Cause serious disorders in the pathways, public spaces or cause serious damage to property for public use, provided it does not constitute a criminal infringement.

88 Article 20.1: "Officers of the law enforcement bodies may demand, when exercising their duties of investigation or prevention, that people identify themselves and may conduct the relevant checks on the public thoroughfare (...) provided that knowledge of the identities of the persons challenged is necessary to exercise the duty of protecting public safety entrusted to officers in this law (...)"

89 See Article 28. (The figures stated here are converted from those denominated in pesetas in the Law, which was passed prior to Spain adopting the euro. See Resolution of 22 October 2001 of the Sub Secretary of the Ministry of Public Administration, which provided for financial penalties imposed by the Government Delegate and Subdelegate Offices to be redenominated in euros.)

90 See last paragraph of Article 23 c) of the Public Safety Law.

91 Interview with Sara López, member of 15M Legal, April 2013.

92 Interview with the Government Delegate's Office in Madrid, 21 June 2013.

93 "[P]orque el que tiene el derecho de reunión o manifestación cuando esta no está autorizada - porque si está autorizada evidentemente se prioriza el derecho de reunión- cuando el espacio público es algo abierto y alguien trata de doblegarme y me dice que por ahí no puedo pasar...."

94 Appearance of the State Secretary for Security, Ulloa Rubio, before the Interior Committee of the Congress, Session N. 8, 28 June 2012. "(...) El que va a una manifestación lo hace porque va convocado o porque va a identificarse o ejercer su adhesión a un determinado pensamiento o reivindicación (...)"

95 <http://coordinadora25s.wordpress.com/2012/10/page4/>

96 In an interview with an official from the Government Delegate's Office in Madrid, 21 June 2013, it was explained that, if there is no clear evidence, any sign of suspicion is admissible, it being sufficient that others appear to take guidance from the person.

97 Interview with an official from the Government Delegate's Office in Madrid, 21 June 2013.

98 Art. 26 establishes minor infringements of the Law on the Protection of Public Safety, "disobeying the orders of the authorities or their officers, issued in direct application of this Law, unless this constitutes a criminal offence".

99 Infringement of art. 26 h) of the Law on the Protection of Public Safety: Disobeying the orders of the authorities or their officers.

100 As explained in Section 5.5, an investigation for alleged breach of the Criminal Code, related with the demonstration held on the 25 September 2012, was carried out by the Audiencia Nacional. The investigation was eventually closed on 4 October 2012 because the facts alleged did not constitute a criminal offence.

101 See *Bukta and Others v. Hungary*, N. 25691/04, 17 July 2007, para. 36, as mentioned above. The Court has also commented that "an unlawful situation does not justify an infringement of freedom of assembly", see: *Oya Ataman v. Turkey*, N. 74552/01, 5 December 2006, para. 39, and *Cisse v. France*, N. 51346/99, 9 April 2002, para. 50.

102 *Galstyan v. Armenia*, N. 26986/03, 15 November 2007, para. 115.

103 Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Spain from 3 to 7 June 2013 (CommDH(2013)18) available at: <https://wcd.coe.int/ViewDoc.jsp?id=2106465&Site=COE&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>

104 *Ibid*, para. 127.

105 Interview with Sara López, April 2013.

106 See Section 1.

107 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, para. 43.

108 *Ibid*, para. 51.

109 In numerous judgments, the European Court of Human Rights has underlined that the limits of acceptable criticism are wider in regard to politicians than as regards private individuals; politicians inevitably and knowingly lay themselves open to close public scrutiny of their words and actions and must consequently display a greater degree of tolerance (see e.g. *Lingens v. Austria*, N. 9815/82, 8 July 1986, para. 42, and *Lyashko v. Ukraine*, N. 21040/02, 10 August 2006, para. 41). Similarly the UN Human Rights Committee has observed that "in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high... all public figures, including those exercising the highest political authority..., are legitimately subject to criticism and political opposition" (General Comment No. 34 on freedom of expression, para. 38).

110 Court of Instruction N. 4, Preliminary Inquiries Expedited Proceedings 1186/2013, Decision of 10 May 2013,

111 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association report A/HRC/20/27, para. 29, and A/HRC/23/39, para. 51.

112 “Anyone who, without rising up publicly, violently or threateningly invade the seats of the Congress of Deputies, Senate or Legislative Assembly of an Autonomous Community, if they are sitting, shall receive a sentence of three to five years in prison”.

113 “Anyone who promotes, leads or presides over demonstrations or other assemblies outside the seats of Congress, the Senate or the Legislative Assembly of an Autonomous Community when it is sitting, disrupting its normal functioning, shall incur a sentence of six months to one year in prison or a penalty of twelve to twenty-four months”.

114 Art. 495.1: “Anyone who, without rising up publicly, bearing arms or other dangerous instruments, tries to enter the seat of Congress, the Senate or the Legislative Assembly of an Autonomous Community, to present in person or jointly, petitions to it, shall incur a prison sentence of three to five years. 495.2. The penalty given in the previous section shall be in the upper half of the range for those who promote, lead or preside over such group”.

115 Auto de archivo de la causa penal del Juzgado Central de Instrucción N. 1 de la Audiencia Nacional, 4 October 2012.

116 Formal judicial incrimination at the first stage of judicial investigation does not mean that there is a formal charge against the individual under investigation. It is also a safeguard for the right of defence, as the individual concerned has the right to be interrogated by the judge with a lawyer present; those interrogated as witnesses do not have this right.

117 <http://www.europapress.es/nacional/noticia-an-cita-ocho-organizadores-25s-delito-contra-altos-organismos-nacion-20120921184925.html>

118 “La razón es obvia, pues visto lo razonado en el acuerdo de la Sra. Delegada de Gobierno del que se sigue que realmente la convocatoria no pretendía ocupar el Congreso, sino que 'la verdadera intención de la convocatoria era permanecer de forma indefinida en el Paseo del Prado, en las proximidades del Congreso de los Diputados', la gravedad aventurada por la policía no era tal, (ocupar realmente el Congreso)”.

119 See Section 2: The 25S Coordinating Body and the Plataforma En Pie (Stand up Platform) convened through online social networks for a massive demonstration to be held in Madrid, in front of the Congress, under the slogan of “Surround the Congress”, with the purpose of directly addressing to its representatives their protest against what they considered the unjust situation in Spain and the loss of their freedoms and rights.

120 See Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December 1979, Art. 3.

121 See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 4.

122 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 13. See also Human Rights Council resolution 22/10, which, in para. 7, called upon states to “avoid using force during peaceful protests and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force”.

123 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 6, 22

and 23. See also Human Rights Council resolution 22/10, which, in para. 9, called upon states to “investigate any death or injury committed during protests, including from the discharge of firearms or the use of non-lethal weapons by law enforcement officials”. Para. 15 of the resolution “urges States to ensure that victims of human rights violations and abuses have, through existing national mechanisms, access to a remedy and that they obtain redress, including in the context of peaceful protests”.

124 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 7.

125 See OSCE/ODIHR Guidelines, para. 167

126 Report to the Human Rights Council, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, UN Doc A/HRC/22/28, 21 January 2013, para. 78.

127 OSCE/ODIHR Guidelines, Section 6, Policing Public Assemblies, para. 144 and following.

128 See Stark, M (2005) Clinical Forensic Medicine: A Physician's Guide.

129 Amnesty International, “The Pain Merchants: Security equipment and its use in torture and other ill-treatment”, 2003, AI Index: ACT 40/008/2003, p.27.

130 Rezende-Neto, J; Silva, F; Porto, L; Teixeira, L; Rizoli, H (2009), ‘Penetrating injury to the chest by an attenuated energy projectile: a case report and literature review of thoracic injuries caused by “less-lethal” munitions’, World Journal of Emergency Surgery 2009, 4:26.

131 ‘Wani, M; Sultan, A; Wani, M; Malik, M; Baba, M; Masrat, N (2010) Pattern of Injuries due to rubber bullets in a conflict zone. The Internet Journal of Orthopedic Surgery Volume 17 Number 2.

132 The Applied Research Laboratory, The Pennsylvania State University and the Los Angeles Sheriff's Department (2001), The Attribute Based Evaluation of Less than Lethal, Extended Range, Impact Munitions.

133 As described by the European Committee for the Prevention of Torture (CPT), these are hard sponge balls, fired by a projection weapon, capable of immobilising a person up to a range of 30 metres. European Committee for the Prevention of Torture (CPT), Report to the Spanish Government on the visit to Spain from 31 May to 13 June 2011 (CPT/INF(2013)6), 30 April 2013, para. 107.

134 <http://www.lavanguardia.com/politica/huelga-general/20121115/54354514192/huelga-general-manifestaciones-barcelona-29-heridos.html>

135 Interview with Ester Quintana, September 2013.

136 For example. a video available at <http://www.elperiodico.com/es/noticias/sociedad/disparos-mossos-junto-ester-quintana-perdio-ojo-2315152>

137 Interview with Laila Serra, Ester's lawyer, March 2013, who has interviewed witnesses in connection with the complaint which Ester has made against the police.

138 Appearance available at <http://www.parlament.cat/activitat/dspcd/09d006.pdf>

See also <http://www.europapress.es/nacional/noticia-puig-niega-perdida-ojo-mujer-sea-pelota-goma-20121203121723.html>

139 <http://www.elperiodico.com/es/noticias/sociedad/puig-admite-ahora-que-los-mossos-dispararon-donde-ester-perdio-ojo-2266551>

See also <http://www.eldiario.es/catalunya/director-Mossos-disparos-Quintana->

investigacion_0_76992468.html

140 Interview with Laila Serra, January 2014.

141 <http://stopbalesdegoma.org/es> (accessed December 2013).

142 See: Resolució 476/x del Parlament de Catalunya, per la qual s'aproven les Conclusios del l'Informe de la Comissió d'Estudi dels Models de Seguretat i Ordre Públic i de l'Ús de Material Antiavalots en Esdeveniments de Masses. N. 260-00001/10 available at <http://www.parlament.cat/web/activitat-parlamentaria/resolucions>

143 http://ccaa.elpais.com/Ca/2012/07/11/madrid/1341991064_892508.html

144 <http://www.20minutos.es/noticia/1536115/0/manifestacion/mineros/madrid>

145 Telephone interview with an officer from the Ombudsman Office, January 2014.

146 http://politica.elpais.com/politica/2014/03/14/actualidad/1394824361_334879.html

147 See Basic Principles on the Use of Force and Firearms by Law Enforcement Official, Principle 2.

148 See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 7.

149 Croft, S. et al. 2008, *Less Lethal Technologies - Review of Commercially Available and Near-Market Products for the Association of Chief Police Officers*, St Albans, UK: Home Office Scientific Development Branch, Publication N. 49/08.

150 European Committee for the Prevention of Torture, Report to the Spanish Government on the visit to Spain from 31 May to 13 June 2011, (CPT/INF(2013)6), 30 April 2013, para. 107.

151 Letter of the Ombudsman of May 2013 in response to an individual complaint. The letter informs the complainant that after the police intervention in Atocha on 25 September 2012, the Ombudsman Office had made a recommendation to the Ministry of Interior to consider to develop Protocols on the use of force when policing mass demonstrations in public places, with clear and precise instructions on the use of anti-riot equipment and other weapons (armas reglamentarias).

152 Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Spain from 3 to 7 June 2013 (CommDH(2013)19), 9 October 2013, Para. 148.

153 The European Committee for the Prevention of Torture has made this observation in particular in regard to allegations of excessive use of force at the time of arrest by the National Police in Spain: Report to the Spanish Government on the visit to Spain carried out by the CPT from 22 November to 4 December 1998 (CPT/Inf (2000) 5), 13 April 2000, paras 11 and 13; see also Report on the visit to Spain carried out from 31 May to 13 June 2011 (CPT/Inf (2013) 6), 30 April 2013, para. 33.

154 This is portrayed on the cover of this report as well as at http://i.huffpost.com/gadgets/slideshows/252687/slide_252687_1568639_free.jpg

155 Information provided by his lawyer, December 2013.

156 Manuel told Amnesty International in December 2013 that he was not aware of any investigation having yet been initiated.

157 See Basic Principles on the Use of Force and Firearms by Law Enforcement Official, Principle 5 (c)

158 See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, adopted on 9 December 1988, Principle 24; Standard Minimum Rules for the Treatment of Prisoners, Rule 24. See also UN Human Rights Committee, General Comment N.

20.

159 UN Code of Conduct for Law Enforcement Officials, Article 6.

160 United Nations Rules for the Treatment of Women Offenders (the Bangkok Rules), N. 2010/16, 22 July 2010, Rule 10 (2).

161 See European Committee for the Prevention of Torture, CPT 12th General Report, CPT/Inf/(2002)15, CPT standards in respect of police custody, para. 42.

162 European Committee for the Prevention of Torture, 2nd General Report [CPT/Inf (92) 3], para. 53.

163 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 1 and 6; see also Articles 7 and 10 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights.

164 See report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture, CPT/Inf (2013)6 from 31 May to 13 June 2011, para. 33; available at <http://www.cpt.coe.int/documents/esp/2013-06-inf-eng.pdf>

165 See Amnesty International, “Adding Insult to Injury: the effective impunity of police officers in cases of torture and other ill-treatment”, 14 November 2007, AI Index EUR 41/006/2007.

166 National Mechanism for the Prevention of Torture (Mecanismo Nacional de Prevención de la Tortura, (MNPT)), Report 2012 General Conclusions, para. 259, http://www.defensordelpueblo.es/es/Mnp/InformesAnuales/InformeAnual_MNP_2012.pdf

States parties to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment are obliged to establish a National Preventive Mechanism (NPM) at the domestic level to carry out visits to places of detention; in Spain the Ombudsman has been designated to carry out this function.

167 In addition to the cases described below, see the case of freelance journalist Paloma Aznar Fernandez, as described in Amnesty International, “Policing Demonstrations in the European Union”, October 2012, AI Index EUR 01/022/2012, p. 10.

168 See RSF, “Media presence not wanted when police disperse protests”, 23 August 2011, <http://en.rsf.org/spain-media-presence-not-wanted-when-23-08-2011,40824.html>; CPJ, “In Spain, police violence against press sparks concern”, 28 August 2011, <http://www.cpj.org/blog/2011/08/in-spain-police-violence-against-press-sparks-conc.php>

169 News report by La Sexta TV Channel (November 2012), <http://www.youtube.com/watch?v=l4xzQrZymYg>, in which the channel stated its regret at authorities’ censorship when its camera operator was arrested when she was covering the excessive use of force by police during an eviction in Seville. The channel explained that the reason for arresting its journalist was to avoid the showing of the images of excessive use of force.

170 http://www.lasexta.com/noticias/sociedad/silencio-oficial-intolerable-detencion-camara-lasexta_2012112600174.html, see also public statement of the Spanish Press Association requesting the immediate release of the camera operator at <http://www.fape.es/la-fape-la-asociacion-de-la-prensa-de-sevilla-y-el-sindicato-de-periodistas-de-andalucia-piden-un-81880460.htm?q=detencion+periodista+sevilla>

171 Interviewed by Amnesty International in Madrid, June 2013. In May 2013, he was awarded the Ortega y Gasset Journalism Prize in the digital journalism category. The panel highlighted the increasing

importance of citizen journalism in recent years, and stated that the video presented was the best image of the social unrest of the past month of September and showed how the cameras of citizens sometimes reach where the audio-visual media cannot.

172 Juan Ramon's video of the events on 25 September is available at: http://www.youtube.com/watch?v=UDCRgqspmyU&oref=http%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DUDCRgqspmyU&has_verified=1. It shows from minute 6 onwards the events inside Atocha station. After seeing this video, together with other information, Amnesty International sent a letter to the Minister for the Interior in October 2012.

173 These incidents are described in more detail in Section 5.5 of this report.

174 The video (see endnote 172 above) shows from minute 7.50 onwards, including, on the soundtrack, Juan Ramon's exclamation when the police grabbed his camera, and his commentary explaining what was happening.

175 A video shot by Juan Ramon on that night is available at http://www.youtube.com/watch?v=_c-T13l6ItU

176 Human Rights Committee, General Comment 34, Article 19: Freedoms of Opinion and Expression, para. 13.

177 See OSCE/ODIHR Guidelines, Guideline 5.10 and paras 206-10.

178 See Human Rights Committee, General Comment 34, Article 19: Freedoms of Opinion and Expression, paras 21-36.

179 See Special Report: Handling of the media during political demonstrations. Observations and Recommendations, 21 June 2007, available at <http://www.osce.org/fom/25744>

180 See OSCE/ODIHR Guidelines, para. 199.

181 <http://www.prevenciontortura.org/wp-content/uploads/2013/05/INFORME-CPT-2012-final.pdf>, p.15-16

182 Amnesty International, "Adding Insult to Injury: The effective impunity of police officers in cases of torture and other ill-treatment", 14 November 2007, AI Index EUR 41/006/2007.

183 Amnesty International, "Adding Insult to Injury, Police impunity two years on", 3 November 2009, AI Index EUR 41/010/2009.

184 See International Covenant on Civil and Political Rights, Articles 2 and 7, and Human Rights Committee, General Comment N. 31, paras 15-16; Convention against Torture, Articles 12-14; European Convention on Human Rights, Articles 3 and 13.

185 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 6, 7, and 22.

186 For example, Avadanov v Azerbaijan, Views of the Human Rights Committee. UN Doc. CCPR/C/100/D/1633/2007 (2010). paras 9.3-9.5; European Court of Human Rights, Aydin v Turkey N. 23178/94, 1997, para.103.

187 Human Rights Committee, General comment N. 31, paras 15-17.

188 Human Rights Committee, General comment N. 31, paras 15 and 18.

189 Appearance of the State Secretary for Security, Ulloa Rubio, before the Interior Committee, Session

No. 8, 28 June 2012.

190 Both in its 2007 report, "Adding Insult to Injury, The effective impunity of police officers in cases of torture and other ill-treatment", and the follow up report of 2009, AI Index EUR 41/010/2009, Amnesty International highlighted how the lack of proper identification had contributed to impunity in cases of ill-treatment by police.

191 The Ombudsman in the Autonomous Community of Catalonia. The Sindic's role is to handle the complaints of anyone regarding the autonomous and local administration in Catalonia.

192 Letter of 4 August 2011 to Amnesty International.

193 These events can be seen in a video (shot by Juan Ramon Robles, see above) at https://www.youtube.com/watch?v=UDCRgqspmyU&oref=http%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DUDCRgqspmyU&has_verified=1

194 Letter sent to the Minister of the Interior on 9 October 2012.

195 Letter sent to the Minister of the Interior in January 2013, with a petition signed by more than 60 thousand people calling for an investigation.

196 See, for example, the summary in Opinion of the Council of Europe Commissioner for Human Rights concerning independent and effective determination of complaints against the police (CommDH(2009)4), 12 March 2009.

197 *Salman v Turkey*, N.21986/93, 27 June 2000, para. 123; *Nachova v Bulgaria* N.43577/98 and 43579/98, 6 July 2005, para. 110.

198 Human Rights Committee, General Comment N. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 15.

199 See Basic Principles on the Use of force and Firearms, Principle 7: "Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law".

200 Principle 2 of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 12 of the Convention against Torture.

201 See European Committee for the Prevention of Torture, 12th General Report [CPT/Inf (2002) 15, para. 45; 14th General Report CPT/Inf (2004) 28, paras 27–9.

202 Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Spain from 3 to 7 June 2013 (CommDH(2013)19), 9 October 2013, para. 134.

203 See Amnesty International "Adding Insult to Injury: The effective impunity of police officers in cases of torture and other ill-treatment", 2007, AI Index EUR 41/006/2007.

204 Amnesty International "Policing demonstrations in the European Union", 2012, AI Index EUR 01/022/2012. Angela Jaramillo was injured during a demonstration in Madrid in August 2011, and the journalist Paloma Aznar was injured during the "Black March" on 11 July 2011, the same demonstration where Consuelo Baudin (see above) was also injured. In both cases the courts did not pursue the complaint because the police officers responsible for the violence they suffered could not be identified. Neither woman received any reparation.

205 <http://www.nuevatribuna.es/articulo/sociedad/cifuentes-pide-rationar-el-derecho-de-manifestacion/20121002124705081970.html>

206 The most recent revision of the Criminal Code was Organic Law 5/2010 of 22 June, amending O.L 10/1995, of 23 November on the Criminal Code.

207 Informe al Anteproyecto de Ley Orgánica por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, 16 January 2013, p. 258.
http://www.poderjudicial.es/cgpj/es/Poder_Judicial/Consejo_General_del_Poder_Judicial/Actividad_del_CGPJ/Informes/Informe_al_Anteproyecto_de_Ley_Organica_por_la_que_se_modifica_la_Ley_Organica_10_1995_de_23_de_noviembre_del_Codigo_Penal

208 See Title XXII of the Criminal Code: Crimes against Public Order, Chapter II: Attacks against the authority, its agents and public servants, and resistance and disobedience: Articles 550, 551, 554, 556; Chapter III: Public Disorders, Articles 557 and 560.

209 Paragraph XXV of the bill.

210 The General Council of Judiciary has also commented on this point. See Informe al Anteproyecto de Ley Orgánica por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, 16 January 2013, pp. 250-1.

http://www.poderjudicial.es/cgpj/es/Poder_Judicial/Consejo_General_del_Poder_Judicial/Actividad_del_CGPJ/Informes/Informe_al_Anteproyecto_de_Ley_Organica_por_la_que_se_modifica_la_Ley_Organica_10_1995_de_23_de_noviembre_del_Codigo_Penal

211 See, for example, UN Human Rights Committee, General Comment N. 34, Article 19: Freedoms of Opinion and Expression, 12 September 2001, CCPR/C/GC/34, para. 25.

212 See Title IV of the Criminal Code: Misdemeanour against public order. Articles 633 to 637.

213 Article 633 of the Criminal Code, punishable with house arrest and fines.

214 Article 634 of the Criminal Code, punishable with fines, or house arrest if unpaid.

215 See Section 5 above for a description of the Law on the Protection of Public Safety.

216 Ibid.

217 Ibid.

218 UN Human Rights Committee, General Comment 34, para. 38.

219 After the widescale distribution on the Internet and other media of images taken by journalists and by individuals using mobile phones which showed the excessive use of force by law enforcement officials during demonstrations in September and October 2012, the Director General of Police announced at a meeting with some of the police unions that a ban on taking images of officers in the course of their duty, if such images put the person or operation in question at risk, would be considered for inclusion in a future, amended, version of the Law on the Protection of Public Safety. Although he said this ban would be aimed at private individuals rather than the media, he also pointed out that the measure would need further study, given the existence of alternative Internet-based media, which cannot clearly be classified as one or the other. In a radio interview, the President of the European Popular Party, the Spaniard Jaime Mayor Oreja, expressed his concern at the distribution of images of police charges against protestors, on the ground that it can encourage more people to go to demonstrate.

220 See section 4 and 5.

221 See section 4 and 5.

222 Government answer to a written question of the Cross Party Group (Grupo Mixto) in the Congress,

30 September 2013.

223 http://www.cis.es/cis/export/sites/default/-Archivos/Marginales/3000_3019/3001/Es3001.pdf



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SPAIN: THE RIGHT TO PROTEST UNDER THREAT

In Spain, the economic crisis, austerity measures and cuts in basic social services have led thousands of people to take to the streets in recent years. Despite the peaceful nature of the overwhelming majority of demonstrations, there were reports of excessive use of force and ill-treatment by police, an increase in the number of fines being issued for participating in protests and abuses by law enforcement officials against journalists reporting on the rallies. The Spanish authorities have also expressed their intention to impose further restrictions on the holding of demonstrations, proposing amendments to the legislation directly affecting the exercise of this right.

This report lays out Amnesty International's concerns in relation to the restrictions imposed on freedom of expression and peaceful assembly in the context of demonstrations in Spain. It concludes that police used excessive force both through the misuse of anti-riot equipment during demonstrations and while detaining protestors. The report documents cases of ill-treatment of individuals under police custody, and highlights a number of concerns about the inadequate investigations being carried out by the authorities into alleged human rights violations committed by law enforcement officials.

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April 2014

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