

£SPAIN

@Torture and Ill-treatment: Summary of Amnesty International's Concerns

Amnesty International has received allegations over many years of the use of torture and ill-treatment against people in custody. Most allegations relate to cases where unwarranted and deliberate physical violence, sometimes amounting to torture, has been used by law enforcement officers in the period after arrest. These allegations concern all agencies of law enforcement comprising the Civil Guard, the National Police, the Municipal Police and the Autonomous Police (*Policía Autónoma*). The allegations have been made by people arrested on suspicion of ordinary criminal offences as well as those suspected of membership in or collaboration with armed gangs or terrorist groups.

The most common forms of ill-treatment alleged are kicks, punches and beatings with batons or other implements, such as telephone directories. Detainees are frequently hooded for long periods. Other allegations have also been received of mock executions, electric shocks, partial-asphyxiation with plastic bags and sexual abuse. In many cases these allegations are supported by medical and other forensic evidence. The complaints made to the courts are the subject of judicial investigation but these inquiries have frequently been extremely slow and often inconclusive. In the few successful prosecutions, the sentences have been nominal with convicted officers frequently continuing to work within their original law enforcement agencies.

Spain has ratified all the major instruments prohibiting torture and cruel or inhuman or degrading treatment or punishment. Article 15 of the Constitution forbids the use of torture or inhuman or degrading penalties or treatment and such offences may be punished under the Penal Code.

The suspension of certain key procedural rights and safeguards allowed by existing Spanish law relating to arrest and detention arguably violates international principles for the protection of people in detention or imprisonment.

Article 17 of the Constitution establishes a maximum time limit of 72 hours under which a person may be held without being freed or brought before a judicial authority. Article 520 of the Law on Criminal Procedure lays down the limit of 72 hours of preventive detention and establishes the rights of defence and access to legal counsel, as well as the provisions for detainees' families to be informed of their whereabouts and for medical examination. However, Article 520 bis and 527 suspend certain key provisions and

safeguards of Article 520. People detained on suspicion of membership or collaboration with armed gangs or terrorist groups may, under these articles, be held in incommunicado detention for 72 hours. This can be extended by 48 hours by judicial order, on request of the police. The police do not have to physically bring the detainee before a judge to obtain this extension. This, therefore, allows incommunicado detention for up to a total of five days. These detainees held incommunicado are:

- not allowed to appoint counsel of their choice. Counsel is always appointed *de oficio*;
- not allowed to inform their families or friends of their place of detention;
- not allowed to consult their lawyer before making a statement either in the police station or later in court. The lawyer may only consult in private with the detainee after the order for incommunicado detention has been lifted by the court.

Amnesty International is concerned that the suspension of the important safeguards in Article 520, allows prolonged incommunicado detention, thereby facilitating the use of torture and ill-treatment which most often occurs during the period immediately after arrest. Amnesty International therefore believes that Spain must review its practice of incommunicado detention in accordance with its obligations under Article 11 of the Convention against Torture.

Spain has ratified the International Covenant on Civil and Political Rights and the European Convention on Human Rights, both of which require the detainee to be brought promptly before a judicial authority. The existing law in Spain, allowing up to five days incommunicado detention, arguably violates the ruling by the European Court of Human Rights in November 1988 in the case of Brogan and Others (Series A, N° 145B) that failure to bring a detainee before a judge for a period of four days and six hours was excessive even when suspects are held under anti-terrorist legislation.

Principles 15 and 16 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment entitle detainees to notify members of their families of their whereabouts promptly after their arrest and after each transfer while in custody. Article 520 d) of the Law of Criminal Procedure contains this as a right but Article 527 b) removes it for people who are held incommunicado. The Basic Principles of the Role of Lawyers adopted in September 1990 by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders state that people have the right to be assisted by a **lawyer of their own choice** (Principle 5) and they shall have "prompt access...in any case not later than **forty-eight hours** from the time of arrest or detention" (Principle 7). Under existing Spanish legislation people may be held incommunicado for up to five days and cannot either designate legal counsel of their own choice or consult in private with them until the order for incommunicado detention has been lifted by the court.

Amnesty International has continued to receive allegations of ill-treatment since the UN Committee against Torture examined Spain's Initial Report in November 1990. In 1991 there was an increase in the numbers of Civil Guards and police accused of ill-treatment. According to figures released in July 1992 by the Ministry of the Interior, 171 judicial proceedings had been opened involving 392 officers accused of ill-treatment: 132 more than the previous year. Two judicial proceedings, involving a total of seven officers, were also opened into accusations of torture during 1991.

Allegations of torture and ill-treatment were made following the arrests between January 1992 and mid-May 1992 of approximately 50 people suspected of belonging to or collaborating with the "Bizkaia" commando of ETA. Thirty-two of them were held in incommunicado detention before appearing in the National Court in Madrid. Nearly all these detainees made allegations that they had been hooded, blindfolded and forced to do exercises. Some detainees said they had been beaten, kicked and in two cases they alleged they had been given electric shocks. Most of the female detainees complained that they had been forced to strip and suffered persistent sexual insults and humiliation. Observers reported that many of the detainees showed visible injuries. One of them, Kepa Urria Guridi, had to be transferred urgently from the Civil Guard station to hospital. A doctor who visited the station stated that he had seen Kepa Urria unconscious on the floor, breathing very rapidly, with marks on his face, eyes, wrists and recent bleeding at the back of his throat and in his nose and mouth. (See Appendix 1 for details of allegations and injuries to other detainees). Nine Civil Guard officers have so far been accused (*inculpados*) in connection with the complaint.

Allegations of torture and ill-treatment were also made by people suspected of ordinary criminal offences. Two tourists, Mohamed Mahmoud Amer Hegazy and Emad Raed Shibli were arrested in September 1991 by the Civil Guard in Ibiza. They alleged they were handcuffed and punched, kicked and beaten by officers. One of them was threatened with a knife. They were released within 72 hours after being charged with resisting and disobeying public officials. Medical examinations and photographs showed signs of severe bruising to Mohamed Hegazy's buttocks, back, arms and legs. They complained to the court and an inquiry was opened into their complaints. (See Appendix 2). The press reported that the court had filed the complaint one month later on the recommendation of the Public Prosecutor. Neither of the two detainees was informed of this decision or even interviewed by the court which was supposedly conducting an

inquiry into their complaint.

In May 1992 eight members of a multinational rugby football team, including several international players, alleged that officers of the Municipal Police in Benidorm had carried out a serious and unprovoked attack on them. Players said they had been punched, kicked, hit with truncheons and menaced with firearms. Their allegations were supported by photographic and medical evidence. There is still no result in the inquiry opened into their complaints. (See Appendix 3).

In May 1992, a trade union leader in Mallorca, Antonio Copete González, was arrested by Civil Guards in Mallorca. He received serious bruising to his back and shoulder following a baton charge against a trade union demonstration. The press reported that it had been peaceful up until that point. Antonio Copete was arrested, handcuffed and taken to the Civil Guard headquarters. A plainclothes officer, whom he identified, slapped him around the face while he was handcuffed and fractured his eardrum. He was released without charge. (See Appendix 4).

A State party to the Convention against Torture has an obligation to investigate acts of torture and bring perpetrators to justice even if the act of torture occurred before the Convention entered into force for the State. Inquiries into complaints of ill-treatment have usually been very slow. For example, the inquiry into the case of Emilio Ginés, arrested in Madrid in February 1979 and held incommunicado for eight days, has still to produce a result. He alleged he was hit with fists and rubber truncheons, subjected to near-asphyxiation and suspended from a bar. Medical reports show fractures to two ribs, extensive bruising and injuries to his chest. Other inquiries have led to trials, although only after long delays. In October 1992 five Civil Guards were found guilty of torturing Joaquín Olano in 1983. He had been held incommunicado and the court found that he had been punched, kicked, hit with a telephone directory, hooded, partially asphyxiated, submerged in water and given electric shocks. He had been tortured even after a doctor and a court official had examined him the day after his arrest. The officers received sentences of between two and seven months' imprisonment, plus varying terms of up to seven years' disqualification from holding public office. Terms of imprisonment under one year and one day are not normally custodial. Two of the officers had previously been convicted in 1986 of torturing another prisoner. They did not serve any sentences for that offence, nor were they suspended but remained on active service until they were pardoned in February 1991.

In other cases officers convicted of the torture and ill-treatment of detainees have been allowed to continue in positions of authority and have committed the same offence again. One officer, who is currently under judicial investigation in connection with the allegations of the torture of eight youths in Zornotza in 1980, has two previous convictions for torturing prisoners. Other officers convicted of torture and offences related to torture have remained

on active duty and some were even promoted after sentencing at first instance. They were not suspended on the grounds that the convictions were subject to appeals. (See Appendix 5).

There are instances of officers who were the subject of complaints creating obstacles for the courts investigating these complaints. The Parliamentary Commissioner, or Ombudsman (*Defensor del Pueblo*), made an important statement in his Report to parliament in April 1990 describing obstructive practices used by the police during the investigation of complaints. He recognized that there could be long delays in judicial inquiries and, consequently, emphasized the importance of internal investigations being pursued. Appropriate suspensions or disciplinary measures could, in his view, be adopted which would not prejudice possible judicial proceedings. (See Appendix 6 for extracts of his statement).

In his 1992 Report, the Parliamentary Commissioner criticized the commanders of the State Security Forces for opposing the preventive suspension (*medidas cautelares de suspensión de funciones*) of officers accused of torture and ill-treatment on the pretext that it was necessary to await the judicial pronouncement (*pronunciamiento judicial*) of the sentence.

APPENDICES

- Appendix 1 -Allegations of torture and ill-treatment following detention of suspected members and collaborators of ETA "Bizkaia" commando. **Extracts from:** *Amnesty International Concerns in Europe: November 1991 - April 1992* (AI Index: EUR 01/03/92); *Amnesty International Concerns in Europe: May 1992 - October 1992* (AI Index: EUR 01/04/92).
- Appendix 2 - The alleged ill-treatment of Mohamed Hegazy and Raed Shibli in Ibiza. **Extracts from:** *Amnesty International Concerns in Europe: May 1991 - October 1991* (AI Index: EUR 01/02/91); *Amnesty International Concerns in Europe: May 1992 - October 1992* (AI Index: EUR 01/04/92).
- Appendix 3 -The alleged ill-treatment by police of foreign visitors in Benidorm. **Extract from:** *Amnesty International Concerns in Europe: May 1992 - October 1992* (AI Index: EUR 01/04/92).
- Appendix 4 -The alleged ill-treatment of Antonio Copete González by Civil Guards in Mallorca. **Extract from:** *Amnesty International Concerns in Europe: May 1992 - October 1992* (AI Index: EUR 01/04/92).
- Appendix 5 -Inquiries and sentences in legal proceedings against law enforcement officers accused of torture and ill-treatment. **Extract from:** *Amnesty International Concerns in Europe: May 1992 - October 1992* (AI Index: EUR 01/04/92).
- Appendix 6 -Statements on ill-treatment contained in the Ombudsman's Report for 1989. **Extract from:** *Amnesty International Concerns in Western Europe: October 1989 - April 1990* (AI Index: EUR 03/01/90).