Public

amnesty international

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

14 November 2007 Index: EUR 41/006/2007

TABLE OF CONTENTS

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

INTRODUCTION

For many years Amnesty International, together with other international and national non-governmental organisations (NGOs), and a range of UN and Council of Europe human rights bodies, have expressed serious concerns regarding torture or other cruel, inhuman or degrading treatment (ill-treatment[1]) committed by law enforcement officials[2] in Spain and the effective impunity enjoyed by many in relation to these acts. This report highlights cases investigated by Amnesty International in which individuals reported they had been hit, kicked, punched and verbally abused by police officers, including while handcuffed, and both in the street and while in police custody. Complainants have also claimed that they were threatened with a gun or knife, whipped on the soles of their feet, and received death threats from police officers. In one case a detainee was told that if he did not cooperate, the police officers would rape his girlfriend. In another case, a man lost hearing in one ear for several weeks as a result of blows to his head from police officers.

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

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

Spain is party to a number of international human rights treaties which impose upon the Spanish authorities obligations to prevent and punish ill-treatment by its agents and ensure redress and reparation to the victims of such treatment. These treaties include the **International Covenant on Civil and Political Rights** (ICCPR), the **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (UN Convention against Torture), and the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (ECHR). In addition, on 6 April 2006 Spain ratified the **Optional Protocol to the UN Convention against Torture**, which, among other things, requires Spain to create, maintain or nominate one or more bodies to carry out regular visits to all places where people are deprived of their liberty, in order to prevent ill-treatment. Spain is also party to the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, and as such has permitted regular and ad hoc visits from the CPT[4] to all places where people are deprived of their liberty.

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

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

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

Article 15 of the **Spanish Constitution** affirms the right to life and physical integrity, and prohibits torture and degrading or inhuman treatment or punishment in all circumstances[5]. The criminal code of 23 November (1995) defines and establishes the penalties for acts of torture committed by public officials in Articles 174 – 176. The maximum penalty for torture is six years' imprisonment and disqualification from office for up to 12 years. The law also criminalises the actions of a public official who, failing in his or her professional duty, allows torture or other ill-treatment to be committed by another person.[6]

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

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

Commenting on similar statements by officials, in 2002 the UN Committee against Torture[10] expressed concern about "the dichotomy between the assertion of

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

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

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

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

Following an incident of alleged ill-treatment by law enforcement officials, cases frequently follow the same pattern: non-existent or inadequate internal investigations and prompt provisional discharge[12] of any judicial complaint on the basis of a lack of evidence, even when medical or other credible evidence exists to support the allegations. When cases do come to trial, they often end in acquittal due to the non-identification of the officers responsible, or in nominal sentences. It is not unusual for the proceedings to continue for several years, following repeated closure of the case by the investigating judge[13]. Victims frequently complained to Amnesty International that investigating judges and prosecutors relied too heavily on statements by police while not giving equal credence to victims or witnesses. Amnesty International is also concerned about cases in which law enforcement officials lodged complaints which appeared designed to discredit the victim's testimony in an attempt to cover up evidence of their own wrongdoing or to intimidate victims of ill-treatment into withdrawing their own complaint against police officers. Other factors identified in this report as contributing to effective impunity for ill-treatment by law enforcement officials in Spain include:

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

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

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

POLICE COMPLAINTS INVESTIGATORY MECHANISMS

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

Law enforcement bodies in Spain

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

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

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

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

Internal police investigatory mechanisms

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

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

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

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

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

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

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

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

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

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

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

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

External oversight mechanisms

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

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

CAUSES OF EFFECTIVE IMPUNITY

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

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

Obstacles to lodging a complaint

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

Article 13, UN Convention against Torture

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

Para. 39, CPT General Report 14

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

The case of Lucian Padurau

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

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

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

Lack of independent investigation

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

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

Independent entities are essential for investigating and prosecuting crimes

committed by those responsible for law enforcement.
Para.1310, E/CN.4/2001/66, Special Rapporteur on torture

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

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

The Case of Sandra Guzmán

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

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

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

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

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

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

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

Failure to investigate

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

Article 12, UN Convention against Torture

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

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

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

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

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

The Case of Beauty Solomon

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

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

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

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

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

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

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

Upon return to the same cell he was aggressively interrogated by a national police officer[21] who pretended to strangle Jordi Vilaseca with his own dreadlocks, stating "These would be good for tying you to the radiator." At one point the officer pinned him to the wall by the neck, shouting, "Don't look at me!" and "Everyone talks in the end!" He was told he would be sent to prison in the Canary Islands where he would catch AIDS. He was also told that his girlfriend would be arrested and the police officers would rape her. After these interrogations Jordi Vilaseca was taken to make a formal police statement. He says it was obvious during the interrogations what the police officers wanted him to say, so he said it in his statement even though it meant incriminating himself. A duty roster lawyer was present while he made the statement but they were not able to speak to each other. He said that the officers were apparently not satisfied with the statement and took Jordi Vilaseca back to the cell for further interrogations and told him "he hadn't said enough." Some time later he was taken to make a new statement, accompanied by a hooded police officer. A new roster lawyer was present who asked for Jordi Vilaseca's home phone number so he could advise the family of the detention, but the police told him "Don't get involved."

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

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

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

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

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

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

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

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

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

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

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

The case of Sergio LD[22]

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

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

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

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

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

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

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

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

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

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

The Case of Iona Collins

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

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

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

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

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

Incomplete or inaccurate medical reports

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

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

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

Para. 42, CPT General Report 12

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

officials.

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

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

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

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

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

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

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

The Case of Marcos V[26]

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

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

Insufficient evidence

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

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

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

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

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

Para. 36, CPT General Report 12

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

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

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

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

The case of Driss Zraidi[28]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Intimidation of complainants

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

Article 13, UN Convention against Torture

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

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

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

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

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

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

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

The case of Daniel Guilló Cruz

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

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

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

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

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

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

Lack of impartiality, promptness and thoroughness in investigations

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

Article 15, UN Guidelines on the Role of Prosecutors

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

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

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

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

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

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

To be considered "effective" according to international standards, an investigation into allegations of ill-treatment must be prompt, thorough and impartial. Some of the cases researched by Amnesty International for this report do not appear to meet these criteria.

In the course of its research, Amnesty International noted a recurring pattern of investigating judges favouring police testimony against that of alleged victims of ill-treatment and other witnesses, and despite the existence of other contradictory evidence, resulting in the dismissal of cases without further investigation purely on the basis of police statements. Even where multiple victims corroborate each other's testimony and police statements contradict each other and themselves, or where there is physical evidence such as medical reports to support victims' allegations, it appears that judges often accept the word of police witnesses as sufficient proof to provisionally discharge a case without further investigation. As a result, cases are often closed without thorough investigation, as seen for example in the cases of Javier S (see below), Jordi Vilaseca and Beauty Solomon. While recognising that the presumption of innocence applies to all persons charged with a crime, Amnesty International is concerned about a pattern that emerged in cases it investigated where it appeared that investigating judges were ignoring evidence that contradicted statements of police officers who were under investigation for criminal conduct. Enquiries by the Council of Europe Commissioner for Human Rights into a case of alleged police misconduct in Spain highlighted this contradiction by asking "How … can it be possible for a judge investigating allegations of ill-treatment simply to ask the alleged perpetrators for information and take their word for it and drop the cases without further investigation."[34]

A matter of particular concern to Amnesty International was the repeated reference by those interviewed to the concept of "presumption of truth" ("la presunción de la veracidad") in relation to police testimony, according to which the word of a police officer is *a priori* taken as truth. Amnesty International's research has indicated that police testimony is not just taken as truth in the absence of other evidence, but even when it is directly contradicted by other evidence. Individual police officers, parliamentarians, staff of human rights ombudspersons and public prosecutors all referred to this concept, although representatives of the judiciary and the Office of Public Prosecutions assured Amnesty International that the "presumption of truth" was not legal doctrine. The general confusion over the existence and/or legal status of the concept raises clear concerns over institutionalised and individual lack of impartiality in which police testimony is weighted more

favourably than any other evidence, even when that testimony is from a party with an interest in the case under investigation. Clearly, the application of "the presumption of truth" contravenes the obligation to ensure impartial investigation of crimes and to ensure that this is not only done but seen to be done. Lack, or perceived lack, of impartiality may also constitute a violation of articles 12 and 13 of the UN Convention against Torture, which place an obligation on states parties to conduct prompt and impartial investigations into all reasonable allegations of ill-treatment. In the case of Ben M'Barek v. Tunisia, the UN Committee against Torture determined that these articles had been violated because the investigating judge was found to have failed in his obligation to investigate impartially by not giving "equal weight to both accusation and defence" and failed to investigate the allegations with sufficient thoroughness.[35]

Amnesty International's research also highlights that where judges and public prosecutors show reluctance to investigate a case of alleged police ill-treatment, the investigatory stage may proceed extremely slowly. The UN Committee against Torture stated in the case of Abad vs. Spain that the promptness of an investigation into allegations of ill-treatment is essential "both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear."[36] In its 2005 report on Spain, the CPT reminded the Spanish authorities that "In order to comply with Article 3 of the ECHR an investigation must … be conducted in a prompt and reasonably expeditious manner. Speed is of the essence at the outset of an investigation into ill-treatment, when immediate steps are required to seize any evidence that may support or undermine *prima facie* evidence of ill-treatment (e.g. police batons which may have been used, uniforms that might be bloodstained, etc)."[37]

The national human rights ombudsperson (*defensor del pueblo*) has repeatedly recommended to the law enforcement agencies that they open disciplinary proceedings as soon as they are aware of any criminal complaint against an officer, which will then remain suspended without prejudice pending the outcome of the judicial investigation[38]. Where law enforcement agencies have waited for judicial proceedings to end before opening a disciplinary investigation it is often too late to do so as the internal statute of limitations has expired.

The following case relates to three individuals who claim that the investigating judge has shown a lack of impartiality in investigating their complaints of ill-treatment.

The case of Juan Daniel Pintos Garrido, Alex Cisterna Amestica and Rodrigo Lanza Huidobro

Juan Daniel Pintos Garrido, Alex Cisterna Amestica and Rodrigo Lanza Huidobro were arrested on 4 February 2006 after a local police officer (Guardia Urbana) was gravely injured in disputed circumstances outside a party in a house in Barcelona. All three men deny any involvement in the incident and have also claimed they were subjected to serious physical ill-treatment during arrest and while in detention at the police station. As of September 2007 they continue to be held in remand detention awaiting trial on charges of assault on a public officer and attempted homicide. In their complaints of ill-treatment submitted to the investigating court, the men stated the following:

In the early hours of the morning of 4 February 2006 Juan Pintos, Alex Cisterna and Rodrigo Lanza were walking home after spending the night out with friends. At approximately 6am they reached Sant Pere street where a number of local police officers and other individuals were already present. While talking to one of the local police officers to enquire whether he could pass through to get to the metro, Rodrigo Lanza states that a second local police officer beat him on the head and ribs, leaving him disorientated. At that moment the police officers began to charge at the assembled group and Rodrigo Lanza saw several people being hit by police with truncheons. He ran a short distance and collapsed on the ground, where another local police officer caught him, hit him, handcuffed him and took him to a police car.

After he tripped and fell while running away from the police charge, Juan Pintos was picked up by a police officer who hit him on the shoulder and head with a truncheon and began dragging him down the street by his jacket before pushing him against a wall and handcuffing him. The officer then began to pull Juan Pintos by his hair, pulling some of it out in the process. Juan Pintos was left sitting on the ground with his hands handcuffed behind him. Several police officers hit him with truncheons while one stamped on his hands and another kicked him in the right side of the face. After this he was pushed into a police van by a plain-clothes police officer.

Alex Cisterna stated that he was beaten about the face, stomach, hip, legs and arms by police officers as he also tried to run away. He was then handcuffed and dragged on

the ground before being pulled up by the hair and thrown into the police car with Rodrigo Lanza. Alex Cisterna and Rodrigo Lanza were transferred to the van where Juan Pintos was detained a short while later. Together with other detainees they were taken to the local police force station of Ciutat Vella, Barcelona. During the journey they were threatened and insulted by the police officers in the van who told the men they would kill them if anything happened to the injured local police officer.

Upon arrival at the police station the men were put in separate cells, alone. An officer hit Alex Cisterna on the hip repeatedly while asking, "Does this hurt?" Rodrigo Lanza was punched in the face three times by a local police officer, injuring his nose and making him fall to the ground. The officer shouted "My colleague is in a coma. If he dies you'll be next, you son of a bitch." The same officer hit him in the legs, arms and back with his truncheon, spat on him, and twisted his arm.

A doctor came to examine the detainees and recommended they be treated in hospital. During transfer and at the hospital the police officers accompanying them made racist insults about the men's South American origins and threatened them with further ill-treatment if they said anything to the doctors about the cause of their injuries. The officers remained present during the medical exam and none of the detainees told the examining doctor about the ill-treatment to which they had been subjected by the police. Rodrigo Lanza required stitches to his head. Juan Pintos's hand was put in plaster. While the doctor was absent one of the police officers squeezed his injured hand and twisted back his finger while laughing at him. Another police officer used his mobile phone to take a photograph of Juan Pintos and told him he would kill him if he saw him again.

After being examined at the hospital the detainees were returned to the local police station and then transferred to Sants-Montjuïc autonomous regional police force (Mossos d'Esquadra) station where they were put into individual cells. Before being transferred from the police station one of the officers handcuffed Alex Cisterna tightly across his bandaged wrist and asked "Does that hurt, you fucking *Sudaca*[39]?" Another police officer hit him on the leg. At the second police station Rodrigo Lanza was taken for fingerprinting and then to another room where he was made to strip to his underwear and was photographed in the presence of three police officers. According to Rodrigo Lanza's testimony, one of the officers slapped him in the face, causing him to fall to the floor after asking him if he knew why he had been arrested. Using one hand to partially strangle him, the officer knelt on his chest while asking

"Does this hurt?" Juan Pintos was also made to strip and was photographed by a police officer whose face was covered by a hood.

Alex Cisterna was taken to a cell and punched by police officers who knocked him to the ground and left him bleeding from the mouth and nose. One of the officers kicked him in the stomach leaving him winded. They then picked him up by the hair and took him to wash his face. When he tried to drink some water they hit him on the head telling him, "We didn't say you could drink" and "You're a *Sudaca* and all *Sudacas* are pieces of shit." Later two police officers took him for fingerprinting and then returned him to the cell where he had been earlier where they beat him and kicked him again. They laughed and told him, "If we kill you nobody will care because you *Sudacas* are shit." Then they took him to wash his face again and returned him to his cell.

Amnesty International was informed that on 6 February Juan Pintos, Alex Cisterna and Rodrigo Lanza appeared before the investigating court and were remanded in pre-trial detention under investigation for attempted homicide. The three men all made complaints of ill-treatment against the police. Their families and lawyers claim that the investigating judge (who is investigating both the charges against Juan Pintos, Alex Cisterna and Rodrigo Lanza as well as their complaints of ill-treatment against the police) has made comments which demonstrate a biased attitude towards the proceedings in favour of the police officers involved. They say the judge informed their lawyers that she would consider as a suspect (in relation to the injured police officer) any individual at the scene who was not a police officer and as a result the victims have not been able to present any witnesses who were present at the time of their arrest.

Although the complaints of ill-treatment were made by the complainants at the same time as the charges were brought against them concerning the injured police officer, at the same investigating court and under control of the same judge, the speed at which each case has been investigated differs greatly. The investigatory stage of the attempted homicide case was completed in June 2006 and the case was pending trial in September 2007. In contrast, nobody was called to make a witness statement on the allegations of ill-treatment until January 2007 (despite the fact that the same individuals had already appeared before the court to declare in the attempted homicide case). The investigating judge did not request information from the police forces involved - for example, the roster of officers on duty at the time of the complainants' detention - until 12 March 2007, more than a year after the events. Representatives of

the Mossos d'Esquadra internal affairs unit told an Amnesty International delegation in June 2007 that no internal investigation had been launched into the incident.

The complainants' lawyers requested that the judge organise an identity parade in order to identify the officers allegedly responsible for the ill-treatment. The defence and the public prosecutor opposed the suggestion. It was not until 18 July 2007 (almost 18 months after the incident) that the judge ordered Rodrigo Lanza to examine a photocopied A4 sheet of paper with 20 small, out of date, black and white photographs of police officers and told him to identify the officers responsible for his ill-treatment, including one who hit him from behind. Subsequently, the investigating judge provisionally discharged the three complaints of ill-treatment at the end of July. The complainants' have submitted an appeal. Their families have also informed Amnesty International that they question the impartiality of the judge and fear that the trial will be unfair.

The following case demonstrates how an apparent failure to investigate thoroughly can lead to permanent closure of the case.

The case of Javier S[40]

According to the complaint he submitted to the investigating court:

Javier S was arrested by two national police officers in Plaça de la Universitat (Barcelona) on the evening of 3 June 2005 while sitting with a small group of friends who had just participated in a gay pride demonstration. The officers grabbed him, beat him, stamped on his head, neck and back, and then handcuffed him before throwing him into a police car. He was not told why he had been arrested. Along with several others who had also been detained he was taken to the police station in Via Augusta.

Upon arrival at the police station the detainees - nine in total - were subjected to insults, including homophobic comments. They were refused permission to use the toilet, to have something to drink or to see a doctor. Javier S was beaten with a truncheon on the chest and punched in the face several times by an officer who shouted, "You little faggot, you can't take anything!" One of the police officers kicked him in the chest leaving a boot mark imprinted on his shirt and punched him repeatedly. As a result Javier S was unable to breathe for several seconds and began to have muscle spasms. The other detainees and one of the police officers present were concerned for his welfare and asked for him to be taken to hospital but this

request was denied. After a few minutes two police officers picked him up from the bench and he believed he was being taken for medical treatment. However, instead of doing so, the same police officer who had kicked him hit Javier S in the chest again while trying to wipe away his boot print. He insulted Javier S continuously saying, "You're such a little faggot." Javier S was later taken to Hospital del Mar for a medical examination. The doctor gave him some medication and instructions on how to deal with his injuries but upon return to the police station the police officers ignored the medical advice and did not give him the medication. Javier S spent the night sleeping on the floor of the police cell without a mattress before being transferred the next day to the police station in Via Laietana.

Javier S told Amnesty International that immediately after their release from police custody on 7 June 2005, he and four others of those arrested with him made formal complaints of ill-treatment at Investigating Court 22. Their complaints were rejected by the judge on 2 September who concluded that the police had acted with the minimal force necessary at the time of the arrest. The judge did not comment on the allegations of ill-treatment inside the police station and did not call any of the plaintiffs to make a statement. According to court documents to which Amnesty International has had access, the judge concluded that "there is no reason to consider… that the police report is contrary to the truth."[41] He reasoned that although police action should be independently investigated, "this requirement does not imply that the police … must always and automatically be excluded on grounds of partiality from reporting on the events."[42] The complainants appealed against this decision on 19 October and the judge continued to reject the complaint. Javier S appealed again, to the Provincial Criminal Court of Barcelona, which on 7 December overruled the lower court's decision and ordered it to investigate the allegations. In contrast to the investigating court, the appeal court noted in its decision the "patent lack of impartiality" and indeed "positive interest" [43] of the police to produce reports favourable to their colleagues when investigating such allegations.

As a result, the investigating court ordered several police officers to appear and give statements. Javier S, his lawyer, and the other complainants went to the court on 15 February 2006 to participate in the proceedings but Javier S told Amnesty International only the lawyers were allowed to enter the building. However, while waiting outside Javier S and the other plaintiffs saw the "accused" police officers arriving and realised that only one of them had been present during the incident. Javier S informed his lawyer of this fact, who transmitted this information to the

investigating judge and refused to participate further in the proceeding, calling it a "farce."

On 8 March 2006 the investigating judge closed the case again on the basis that the testimonies given by the police officers who had appeared in court (and who the complainants claimed were not the ones present in the police station during the incident) did not indicate any misconduct had occurred. The complainants appealed again, calling for the investigating judge to request from the police station a full list of officers on duty on the day of the incident in order to identify and question those believed to have been involved in the assaults, but to date they have been unsuccessful in reopening the case.

The repeated closure of the case and the judge's failure to investigate promptly, thoroughly and impartially have resulted in the case being closed without ever reaching trial. The only recourse left to the complainants is to petition the Constitutional Court on the grounds of denial of due process, which is a lengthy and expensive procedure Javier S says he is financially unable to pursue. The complainants continue to feel great anger and frustration at what they view as a double failure of the police and judicial system. With the support of a local NGO, the Gay Liberation Front of Catalonia (Front d'Alliberament Gai de Catalonia), Javier S has continued to seek justice through other channels, including through the state government representative in Catalonia (delegado del gobierno) and the regional human rights ombudsperson (Síndic de Greuges), both of whom have assured him that an investigation would take place. However, to date he has received no further information from either.

The case of Daniel Díaz Gallego is an example of how both the investigating and appeal court have granted greater credibility to police testimony than other forms of evidence.

The Case of Daniel Díaz Gallego and others

On 3 October 2005 Manuel Matilla and Daniel Díaz were sentenced to three years and six months' imprisonment for assault on a public agent, assault, and public disorder. Israel Sánchez was sentenced to 18 months' imprisonment for public disorder and assault on a public agent. Marcos V was sentenced to six months' imprisonment for assault on a public agent. Another man, arrested at the same time as the others and on

the same charges, was acquitted on the grounds that he had not been identified as a suspect by the police officers testifying before the court. According to information available to Amnesty International he was the only one of the accused who had not filed a complaint of ill-treatment.

The Provincial Criminal Court of Madrid upheld the sentences on appeal on 25 April 2007. In its judgement the court stated that the defendants were originally convicted "exclusively on the testimony of the other local police officers [present at the scene of the arrest] …without bearing in mind the other evidence gathered or the discrepancies between the testimonies given in court and those given by the same witnesses earlier in the investigation", [44] but did not appear to consider this inappropriate.

Failure to impose appropriate sanctions

Each State Party shall make these offences [acts of torture and complicity in torture] punishable by appropriate penalties which take into account their grave nature.

Article 4, UN Convention against Torture

When ill-treatment has been proven, the imposition of a suitable penalty should follow… The imposition of light sentences can only engender a climate of impunity.

Para.41, CPT General Report 14

Amnesty International is concerned about cases in which the sentence imposed on police officers convicted of ill-treatment (including ill-treatment leading to death in custody), do not adequately reflect the grave nature of the offence. This contributes to a climate of effective impunity amongst law enforcement officials and is inconsistent with international standards.

The case of Juan Martínez Galdeano

On 24 July 2005, Juan Martínez Galdeano presented himself at the Civil Guard police station in Roquetas de Mar, Almería, to request assistance following a traffic dispute. According to the facts established by the Provincial Criminal Court of Almería, following an altercation with the officers present, Juan Martínez Galdeano was

arrested for disobedience and resisting agents of authority. As he became increasingly agitated the situation deteriorated further and he was handcuffed and beaten with truncheons (including a non-regulation extendible truncheon) by officers present. A non-regulation electro-shock ("Taser") weapon was also used against him.

Juan Martínez Galdeano died in the police station. The original autopsy conducted on 29 July 2005 was unable conclusively to determine the key factor which caused his death, which was recorded as "an acute respiratory or cardio-respiratory insufficiency"[45] but did note that there was "a direct causal relation between the subject's detention and his death."[46] His body was marked by a large number of bruises believed by the pathologist to have been caused by blows received and physical restraint techniques. A further autopsy on 10 January 2006 concluded the cause of death was an adverse reaction to cocaine aggravated by the violence committed against him.

On 26 July 2005 an internal investigation was launched on the basis of video footage from CCTV cameras in the police station and the information was passed to the judicial authorities, Investigating Court 1 of Roquetas de Mar. As a result, nine police officers were charged with inhuman treatment and assault. All nine were released on bail and the commanding officer was suspended from duty. Charges against one of the officers were later dropped.

On 19 March 2007 the case reached trial stage in the Provincial Criminal Court of Almería and the verdict was issued on 27 April. Five of the accused officers were acquitted. Two were convicted of causing injury and abuse of authority, and were fined. The commanding officer, José Manuel Rivas, was found guilty of minor assault and causing injury. He was sentenced to 15 months' imprisonment, fined, and banned from office for three years. The sentence is being appealed by both the prosecution and the defence.

In 1996, the UN Human Rights Committee stated in its concluding observations on Spain's report that it was concerned that "investigations [into suspected acts of ill-treatment] are not always systematically carried out by the public authorities and that when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released early, or simply do not serve the sentence."[47] This practise has also been criticised by the UN Committee against Torture in its 2005 decision on the case of Kepa Urra Guridi (see below)[48].

UN Committee against Torture decision, 17 May 2005.
Communication No. 212/2002, Kepa Urra Guridi

Kepa Urra Guridi was arrested on 22 January 1992 in a Civil Guard anti-terrorism operation. He claimed to have been tortured while in custody. On 7 November 1997 the Provincial Criminal Court of Vizcaya convicted three Civil Guard officers of torture, sentencing them to just over four years' imprisonment and six years' suspension from duty in the law enforcement agencies. The officers were also ordered to pay the victim compensation of half a million pesetas (approximately US$3,374 at the time).

The Office of Public Prosecutions appealed against the sentence to the Supreme Court, requesting a reduction in sentence and review of the facts. On 30 September 1998 the Supreme Court reduced the sentence to one year's imprisonment for each officer. The Court reasoned that the applicant had been tortured in order to obtain information but that the injuries inflicted did not require medical treatment beyond first aid and as a result the one year sentence was proportional to the gravity of the crime.

The Ministry of Justice requested a pardon ("indulto") for the three officers, which was granted by the Council of Ministers on 16 July 1999. The officers were suspended from public duty for one month and a day, but in spite of this one of the officers remained on active duty.

The UN Committee against Torture considered that the actions of the State were contrary to its obligations under Article 2 of the UN Convention against Torture, according which requires State parties to take effective measures to prevent acts of torture. The Committee also concluded that the reduction of the sentences and granting of pardons violated Article 4 of the Convention which obliges the authorities to ensure that acts of torture are punishable by appropriate penalties which take into account the grave nature of the offence. The Committee concluded that the victim had not received adequate reparation, as required by Article 14, which should include restitution, compensation, rehabilitation and guarantees of non-repetition. As such, the Committee concluded that the State had violated the Convention.

Amnesty International is concerned that in the face of investigations into ill-treatment which are ineffective and not impartial, law enforcement officials are perceived by themselves and by the public to be above the law and the climate of impunity spreads. There is also a risk that those who escape justice will continue to ill-treat detainees.

One of the accused in a case of ill-treatment investigated by Amnesty International is a national police officer, who, according to sources interviewed by the organisation, has been accused of ill-treatment in at least four other unrelated cases. Only one of these cases has reached trial, which was ongoing in September 2007; the other cases were closed at the initial investigatory stage. A lawyer representing one of the individuals making a complaint against the officer alleged to an Amnesty International delegation that the officer was well-known among those working locally in the legal profession for his aggressive behaviour. The lawyer said, "When I go to visit a client in his station, I no longer go alone. Once he threw me out of there physically. He could do anything to you and what witnesses do you have? None. But he has all the other officers to back him up."[49]

In the course of its research Amnesty International noted that several of the officers accused of ill-treatment in the case of Sergio LD were also alleged to have been present during the ill-treatment of Daniel Díaz, Manuel Matilla, Israel Sánchez and Marcos V.

One of the officers convicted in relation to the ill-treatment of Juan Martínez Galdeano (see above) was the subject of a complaint of serious ill-treatment made by another detainee, on 25 February 2005, filed at Investigating Court 2 of El Ejido, Almería. The complainant stated that he had been severely beaten while handcuffed and threatened with death both at the time of arrest and during his three-day detention in police custody. Newspapers reported that the investigating court had taken no action to investigate this complaint at the time of Juan Martínez Galdeano's death five months later and the officer in question was still on active duty. This runs contrary to the recommendations of the UN Committee against Torture which has advised that officers under investigation for ill-treatment be suspended from duty for the duration of the proceedings[50] to ensure they are removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation and to avoid the possibility that they could ill-treat somebody else. According to the internal investigation by the Civil Guard into the death of Juan Martínez Galdeano, the Civil Guard hierarchy had not been informed of any previous allegations of ill-treatment.

In one case researched by Amnesty International the failure to impose adequate sanctions on law enforcement officials convicted of serious human rights violations extends to actively rewarding such individuals through promotion. Amnesty International considers that this fuels a climate of impunity instead of sending a clear message that ill-treatment will be punished by both internal disciplinary and criminal proceedings which reflect the grave nature of the offence.

The case of José Arregui

On 4 February 1981 José Arregui was arrested by national police officers in Madrid on terrorism related charges and detained in a cell at the Regional Information Brigade. On 12 February he received medical treatment at the General Penitentiary Hospital of Carabanchel. Numerous injuries were noted in the medical reports. He died the following day from a bronchopneumonial illness while being transferred to another hospital. Although the autopsy confirmed this illness as his cause of death, it also noted evidence of physical violence on the body, including suspected cigarette burns on his feet. An investigation was opened into possible ill-treatment and two police officers were brought to trial – the sergeant and the officer who took the police statement, Juan Antonio Gil Rubiales.

In 1983 the Provincial Criminal Court of Madrid acquitted the two officers on grounds of lack of evidence linking them to the injuries suffered by the deceased. On the order of the Supreme Court in 1985 the Provincial Criminal Court was required to restate its judgement on the grounds that the original judgement issued was insufficiently clear. The court confirmed its acquittal of the two suspects but this time on the grounds that there was no evidence of ill-treatment at all, notwithstanding the existence of forensic reports to the contrary. In September 1989 the Supreme Court overruled the Provincial Criminal Court and convicted both officers for the crime of torture, sentencing them to two and three years of suspension without pay from their posts respectively and a maximum of four months' detention ("arresto").

Following his suspension, Juan Antonio Gil Rubiales returned to work in 1992 in the Public Security Unit of the National Police in Madrid. From here he was subsequently promoted, first to Chief of the Police Intervention Unit in Gran Canaria (1996), then to Chief of Police in Arona, Tenerife, and most recently to Provincial Superintendent of Santa Cruz de Tenerife (March 2005).

CONCLUSIONS AND RECOMMENDATIONS

Amnesty International considers that the continuing allegations of ill-treatment by police officers result from multiple failings by the Spanish authorities to comply with their international legal obligations which require them to take a range of legislative, judicial, and administrative measures to prevent ill-treatment, bring those responsible to justice, and ensure victims receive reparation. While Amnesty International does not consider ill-treatment by the Spanish law enforcement officials to be routine, based on its research the organization does contest the suggestion that it is rare and that the responsibility for its occurrence lies exclusively with a handful of rogue police officers.

Torture and other ill-treatment are violations of human rights, prohibited under international law in all circumstances. All complaints and reports ill-treatment should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. Victims of such acts should be accorded prompt and adequate reparation from the state including restitution, fair and adequate financial compensation, appropriate medical care and rehabilitation, and guarantees of non-repetition.

Law enforcement officials responsible for ill-treatment must be held accountable at all levels – disciplinary and criminal. Effective disciplinary investigations are an important means of identifying and rectifying systemic failings which facilitate ill-treatment. The findings of independent investigative or monitoring bodies are also important in this regard.

In concluding this report Amnesty International is setting out below a number of recommendations to the Spanish authorities which the organization believes would help to prevent ill-treatment and end impunity for law enforcement officials responsible for such acts.

Specifically, Amnesty International recommends:

On the investigation of allegations of serious human rights violations by law enforcement officials:

The Spanish government should:

- Reform the system of investigating allegations of serious human rights violations, including torture and other ill-treatment, by law enforcement officials to bring it into line with international standards to ensure that investigations are prompt, independent, impartial and thorough. Investigations should be conducted by personnel who are competent, impartial and independent of the alleged perpetrators and the agency they serve. The government should give careful consideration to the possibility of creating a fully resourced independent mechanism, as recommended by the CPT following its 2001 visit to Spain, to investigate all allegations of serious human rights violations by law enforcement officials, including killings (including fatal shootings), torture, and other ill-treatment. Such a mechanism would have the power to order disciplinary proceedings to be instigated against law enforcement officials and to refer a case directly to the judicial authorities for criminal prosecution where appropriate.
- Take immediate action to fully implement the recommendations of international bodies regarding the prevention and punishment of torture and other ill-treatment, including those of the CPT, the Council of Europe Commissioner for Human Rights, the UN Human Rights Committee and the UN Committee against Torture.

The Minister of Interior, and autonomous Counsellors of Interior as appropriate, should:

- Conduct an external audit of the functioning and effectiveness of the internal investigatory mechanisms, to ensure that investigations into allegations of serious human rights violations are conducted in accordance with international standards.

The Office of the Public Prosecutor should:

- Immediately initiate criminal proceedings wherever there is reasonable ground to believe that ill-treatment has been committed by law enforcement officials, even in the absence of an express complaint.

The judicial authorities should:

- Ensure that judges conduct a prompt, thorough and impartial investigation wherever there is reasonable ground to believe that ill-treatment has been committed by law enforcement officials, even in the absence of an express complaint.
- Ensure that where complaints are filed by a detainee alleging human rights violations by law enforcement officials and by law enforcement officials against the detainee, neither complaint is used to undermine the investigation of the other. Complainants should receive protection from any form of intimidation or reprisal.

On the prevention of torture and other ill-treatment:

The Spanish government should:

- Deliver the clear message to law enforcement officials as well as the general public, and instruct senior law enforcement officials to do the same, that ill-treatment of detainees is absolutely prohibited in all circumstances and will be subject to criminal and disciplinary investigation and sanctions.

The Minister of Interior, and autonomous Counsellors of Interior as appropriate, should:

- Ensure that urgent steps are taken to introduce video- and audio-recording of all custody areas of police stations and any other places where detainees may be present, except where this would violate their right to consult with a lawyer or doctor in private. These recordings must be kept in a secure facility for a reasonable period of time in order to ensure they are available for viewing by investigators if so required.

The judicial authorities should:

- Ensure that sentences for ill-treatment are commensurate with the grave nature of the offence.

The police authorities should:

- Immediately initiate disciplinary proceedings against any law enforcement official who is reasonably suspected of committing ill-treatment, even in the absence of an express complaint, and alert the judicial and prosecuting

authorities to any possible criminal conduct. Disciplinary sanctions available for gross misconduct should include provision for dismissal without reinstatement.

- Suspend from active duty any law enforcement official under disciplinary or criminal investigation for ill-treatment for the duration of the proceedings.
- Ensure that all detainees are examined by a doctor (including, if requested, a doctor of their own choice in addition to the police doctor) as soon as possible upon being brought into detention, and whenever necessary thereafter. Medical exams should be conducted out of the hearing and, unless otherwise expressly requested by the doctor in a particular case, out of the sight of law enforcement officials.
- Ensure that law enforcement officials wear visible name tags or numbers so that they can be clearly identified at all times. They should not wear hoods, balaclavas or other devices to conceal their personal identity unless they are authorised to do so in exceptional instances where this is determined to be necessary for their own protection. In such cases the need for each official to be identifiable by such means as a unique traceable identification number is particularly important.

On access to an effective remedy:

The Minister of Interior, and autonomous Counsellors of Interior as appropriate, should:

- Establish effective mechanisms to ensure that any person wishing to submit a complaint against law enforcement officials is not in any way obstructed from so doing. Where a complaint is rejected as inadmissible, the complainant should be given clear and detailed reasons for the decision, in writing, and information on appeals mechanisms and alternative avenues of recourse.

The Office of the Public Prosecutor should:

- Establish mechanisms to record and publish comprehensive data relating to complaints of ill-treatment against law enforcement officials and including the outcomes of each investigation.

The judicial authorities should:

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

On training of law enforcement officials:

The Minister of Interior, and autonomous Counsellors of Interior as appropriate, should:

- Develop and effectively implement, through initial and ongoing training, protocols and guidelines on the appropriate use of force by law enforcement officials which are fully consistent with international human rights standards.

APPENDIX 1

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

Adopted by General Assembly resolution 55/89 Annex, 4 December 2000

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "torture or other ill-treatment") include the following:

(a) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;

(b) Identification of measures needed to prevent recurrence;

(c) Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

2. States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.

3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same

shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

(b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

(b) A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

6. (a) Medical experts involved in the investigation of torture or ill-treatment shall behave at all times in conformity with the highest ethical standards and, in particular,

shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

(b) The medical expert shall promptly prepare an accurate written report, which shall include at least the following:

(i) Circumstances of the interview: name of the subject and name and affiliation of those present at the examination; exact time and date; location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g., detention centre, clinic or house); circumstances of the subject at the time of the examination (e.g., nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner or threatening statements to the examiner); and any other relevant factors;

(ii) History: detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(iii) Physical and psychological examination: record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(iv) Opinion: interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination shall be given;

(v) Authorship: the report shall clearly identify those carrying out the examination and shall be signed.

(c) The report shall be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process shall be solicited and recorded in the report. It shall also be provided in writing, where appropriate, to the authority responsible for investigating

the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report shall not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer.

APPENDIX 2

14th General Report on the CPT's activities

covering the period 1 August 2003 to 31 July 2004

Combating impunity

25. The *raison d'être* of the CPT is the "prevention" of torture and inhuman or degrading treatment or punishment; it has its eyes on the future rather than the past. However, assessing the effectiveness of action taken when ill-treatment has occurred constitutes an integral part of the Committee's preventive mandate, given the implications that such action has for future conduct.

The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity. All efforts to promote human rights principles through strict recruitment policies and professional training will be sabotaged. In failing to take effective action, the persons concerned – colleagues, senior managers, investigating authorities – will ultimately contribute to the corrosion of the values which constitute the very foundations of a democratic society.

Conversely, when officials who order, authorise, condone or perpetrate torture and ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will not be tolerated. Apart from its considerable deterrent value, this message will reassure the general public that no

one is above the law, not even those responsible for upholding it. The knowledge that those responsible for ill-treatment have been brought to justice will also have a beneficial effect for the victims.

26. Combating impunity must start at home, that is within the agency (police or prison service, military authority, etc.) concerned. Too often the esprit de corps leads to a willingness to stick together and help each other when allegations of ill-treatment are made, to even cover up the illegal acts of colleagues. Positive action is required, through training and by example, to **promote a culture** where it is regarded as unprofessional – and unsafe from a career path standpoint – to work and associate with colleagues who have resort to ill-treatment, where it is considered as correct and professionally rewarding to belong to a team which abstains from such acts.

An atmosphere must be created in which the right thing to do is to report ill-treatment by colleagues; there must be a clear understanding that culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows, or should know, that ill-treatment is occurring and fails to act to prevent or report it. This implies the existence of a clear reporting line as well as the adoption of whistle-blower protective measures.

27. In many States visited by the CPT, torture and acts such as ill-treatment in the performance of a duty, coercion to obtain a statement, abuse of authority, etc. constitute specific criminal offences which are prosecuted *ex officio*. The CPT welcomes the existence of legal provisions of this kind.

Nevertheless, the CPT has found that, in certain countries, prosecutorial authorities have considerable discretion with regard to the opening of a preliminary investigation when information related to possible ill-treatment of persons deprived of their liberty comes to light. In the Committee's view, 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. In this connection, the legal framework for accountability will be strengthened if public officials (police officers, prison directors, etc.) are formally required to notify the relevant authorities immediately whenever they become aware of any information indicative of ill-treatment.

28. The existence of a suitable legal framework is not of itself sufficient to guarantee that appropriate action will be taken in respect of cases of possible ill-treatment. Due attention must be given to **sensitising the relevant authorities** to the important obligations which are incumbent upon them.

When persons detained by law enforcement agencies are brought before prosecutorial and judicial authorities, this provides a valuable opportunity for such persons to indicate whether or not they have been ill-treated. Further, even in the absence of an express complaint, these authorities will be in a position to take action in good time if there are other indicia (e.g. visible injuries; a person's general appearance or demeanour) that ill-treatment might have occurred.

However, in the course of its visits, the CPT frequently meets persons who allege that they had complained of ill-treatment to prosecutors and/or judges, but that their interlocutors had shown little interest in the matter, even when they had displayed injuries on visible parts of the body. The existence of such a scenario has on occasion been borne out by the CPT's findings. By way of example, the Committee recently examined a judicial case file which, in addition to recording allegations of ill-treatment, also took note of various bruises and swellings on the face, legs and back of the person concerned. Despite the fact that the information recorded in the file could be said to amount to *prima-facie* evidence of ill-treatment, the relevant authorities did not institute an investigation and were not able to give a plausible explanation for their inaction.

It is also not uncommon for persons to allege that they had been frightened to complain about ill-treatment, because of the presence at the hearing with the prosecutor or judge of the very same law enforcement officials who had interrogated them, or that they had been expressly discouraged from doing so, on the grounds that it would not be in their best interests.

It is imperative that prosecutorial and judicial authorities take resolute action when any information indicative of ill-treatment emerges. Similarly, they must conduct the proceedings in such a way that the persons concerned have a real opportunity to make a statement about the manner in which they have been treated.

29. **Adequately assessing allegations of ill-treatment** will often be a far from straightforward matter. Certain types of ill-treatment (such as asphyxiation or electric shocks) do not leave obvious marks, or will not, if carried out with a degree of proficiency. Similarly, making persons stand, kneel or crouch in an uncomfortable position for hours on end, or depriving them of sleep, is unlikely to leave clearly identifiable traces. Even blows to the body may leave only slight physical marks, difficult to observe and quick to fade. Consequently, when allegations of such forms of ill-treatment come to the notice of prosecutorial or judicial authorities, they should be especially careful not to accord undue importance to the absence of physical marks. The same applies *a fortiori* when the ill-treatment alleged is predominantly of a psychological nature (sexual humiliation, threats to the life or physical integrity of the person detained and/or his family, etc.). Adequately assessing the veracity of allegations of ill-treatment may well require taking evidence from all persons concerned and arranging in good time for on-site inspections and/or specialist medical examinations.

Whenever criminal suspects brought before prosecutorial or judicial authorities allege ill-treatment, those allegations should be recorded in writing, a forensic medical examination (including, if appropriate, by a forensic psychiatrist) should be immediately ordered, and the necessary steps taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Even in the absence of an express allegation of ill-treatment, a forensic medical examination should be requested whenever there are other grounds to believe that a person could have been the victim of ill-treatment.

30. It is also important that no barriers should be placed between persons who allege ill-treatment (who may well have been released without being brought before a prosecutor or judge) and doctors who can provide forensic reports recognised by the prosecutorial and judicial authorities. For example, access to such a doctor should not be made subject to prior authorisation by an investigating authority.

31. The CPT has had occasion, in a number of its visit reports, to assess the activities of the authorities empowered to conduct official investigations and bring criminal or disciplinary charges in cases involving allegations of ill-treatment. In so doing, the Committee takes account of the case law of the European Court of Human

Rights as well as the standards contained in a panoply of international instruments. It is now a well established principle that **effective investigations**, capable of leading to the identification and punishment of those responsible for ill-treatment, are essential to give practical meaning to the prohibition of torture and inhuman or degrading treatment or punishment.

Complying with this principle implies that the authorities responsible for investigations are provided with all the necessary resources, both human and material. Further, investigations must meet certain basic criteria.

32. For an investigation into possible ill-treatment to be effective, it is essential that the persons responsible for carrying it out are independent from those implicated in the events. In certain jurisdictions, all complaints of ill-treatment against the police or other public officials must be submitted to a prosecutor, and it is the latter – not the police – who determines whether a preliminary investigation should be opened into a complaint; the CPT welcomes such an approach. However, it is not unusual for the day-to-day responsibility for the operational conduct of an investigation to revert to serving law enforcement officials. The involvement of the prosecutor is then limited to instructing those officials to carry out inquiries, acknowledging receipt of the result, and deciding whether or not criminal charges should be brought. It is important to ensure that the officials concerned are not from the same service as those who are the subject of the investigation. Ideally, those entrusted with the operational conduct of the investigation should be completely independent from the agency implicated. Further, prosecutorial authorities must exercise close and effective supervision of the operational conduct of an investigation into possible ill-treatment by public officials. They should be provided with clear guidance as to the manner in which they are expected to supervise such investigations.

33. An investigation into possible ill-treatment by public officials must comply with the criterion of thoroughness. It must be capable of leading to a determination of whether force or other methods used were or were not justified under the circumstances, and to the identification and, if appropriate, the punishment of those concerned. This is not an obligation of result, but of means. It requires that all reasonable steps be taken to secure evidence concerning the incident, including, inter alia, to identify and interview the alleged victims, suspects and eyewitnesses (e.g. police officers on duty, other detainees), to seize instruments which may have been

used in ill-treatment, and to gather forensic evidence. Where applicable, there should be an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death.

The investigation must also be conducted in a comprehensive manner. The CPT has come across cases when, in spite of numerous alleged incidents and facts related to possible ill-treatment, the scope of the investigation was unduly circumscribed, significant episodes and surrounding circumstances indicative of ill-treatment being disregarded.

34. In this context, the CPT wishes to make clear that it has strong misgivings regarding the practice observed in many countries of law enforcement officials or prison officers wearing masks or balaclavas when performing arrests, carrying out interrogations, or dealing with prison disturbances; this will clearly hamper the identification of potential suspects if and when allegations of ill-treatment arise. This practice should be strictly controlled and only used in exceptional cases which are duly justified; it will rarely, if ever, be justified in a prison context.

Similarly, the practice found in certain countries of blindfolding persons in police custody should be expressly prohibited; it can severely hamper the bringing of criminal proceedings against those who torture or ill-treat, and has done so in some cases known to the CPT.

35. To be effective, the investigation must also be conducted in a prompt and reasonably expeditious manner. The CPT has found cases where the necessary investigative activities were unjustifiably delayed, or where prosecutorial or judicial authorities demonstrably lacked the requisite will to use the legal means at their disposal to react to allegations or other relevant information indicative of ill-treatment. The investigations concerned were suspended indefinitely or dismissed, and the law enforcement officials implicated in ill-treatment managed to avoid criminal responsibility altogether. In other words, the response to compelling evidence of serious misconduct had amounted to an "investigation" unworthy of the name.

36. In addition to the above-mentioned criteria for an effective investigation, there should be a sufficient element of public scrutiny of the investigation or its

results, to secure accountability in practice as well as in theory. The degree of scrutiny required may well vary from case to case. In particularly serious cases, a public inquiry might be appropriate. In all cases, the victim (or, as the case may be, the victim's next-of-kin) must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.

37. **Disciplinary proceedings** provide an additional type of redress against ill-treatment, and may take place in parallel to criminal proceedings. Disciplinary culpability of the officials concerned should be systematically examined, irrespective of whether the misconduct in question is found to constitute a criminal offence. The CPT has recommended a number of procedural safeguards to be followed in this context; e.g., adjudication panels for police disciplinary proceedings should include at least one independent member.

38. Inquiries into possible disciplinary offences by public officials may be performed by a separate internal investigations department within the structures of the agencies concerned. Nevertheless, the CPT strongly encourages the creation of a fully-fledged independent investigation body. Such a body should have the power to direct that disciplinary proceedings be instigated.

Regardless of the formal structure of the investigation agency, the CPT considers that its functions should be properly publicised. Apart from the possibility for persons to lodge complaints directly with the agency, it should be mandatory for public authorities such as the police to register all representations which could constitute a complaint; to this end, appropriate forms should be introduced for acknowledging receipt of a complaint and confirming that the matter will be pursued.

If, in a given case, it is found that the conduct of the officials concerned may be criminal in nature, the investigation agency should always notify directly – without delay – the competent prosecutorial authorities.

39. Great care should be taken to ensure that persons who may have been the victims of ill-treatment by public officials are not dissuaded from lodging a complaint. For example, the potential negative effects of a possibility for such officials to bring proceedings for defamation against a person who wrongly accuses them of ill-

treatment should be kept under review. The balance between competing legitimate interests must be evenly established. Reference should also be made in this context to certain points already made in paragraph 28.

40. Any evidence of ill-treatment by public officials which emerges during **civil proceedings** also merits close scrutiny. For example, in cases in which there have been successful claims for damages or out-of-court settlements on grounds including assault by police officers, the CPT has recommended that an independent review be carried out. Such a review should seek to identify whether, having regard to the nature and gravity of the allegations against the police officers concerned, the question of criminal and/or disciplinary proceedings should be (re)considered.

41. It is axiomatic that no matter how effective an investigation may be, it will be of little avail if the **sanctions imposed for ill-treatment** are inadequate. When ill-treatment has been proven, the imposition of a suitable penalty should follow. This will have a very strong dissuasive effect. Conversely, the imposition of light sentences can only engender a climate of impunity.

Of course, judicial authorities are independent, and hence free to fix, within the parameters set by law, the sentence in any given case. However, via those parameters, the intent of the legislator must be clear: that the criminal justice system should adopt a firm attitude with regard to torture and other forms of ill-treatment. Similarly, sanctions imposed following the determination of disciplinary culpability should be commensurate to the gravity of the case.

42. Finally, no one must be left in any doubt concerning the **commitment of the State authorities** to combating impunity. This will underpin the action being taken at all other levels. When necessary, those authorities should not hesitate to deliver, through a formal statement at the highest political level, the clear message that there must be “zero tolerance” of torture and other forms of ill-treatment.

[1] For the purposes of this report, the term "ill-treatment" is used throughout to include torture and all other forms of cruel, inhuman and degrading treatment or punishment, unless the context clearly indicates otherwise.

[2] The terminology "law enforcement official" and "police officer" are used in this report to refer to an agent of any public police force in Spain including those at the national, autonomous regional and local level, and the Civil Guard.

[3] Committee for the Prevention of Torture, General Report 14, 2004, para 25 (CPT, General Report 14).

[4] The Committee for the Prevention of Torture (CPT) is comprised of legal, medical, and law enforcement experts drawn from States parties to the ECHR, which conducts periodic and ad hoc visits to places of detention in States parties. Upon authorisation of the state concerned it publishes the reports of its visits which contain its observations and recommendations aimed at eradicating torture and other ill-treatment. It also publishes annual general reports which include thematic and general recommendations aimed at preventing torture and other ill-treatment.

[5] Spanish Constitution of 1978, Article 15.

[6] Law 10/1995 of 23 November, Spanish Criminal Code.

[7] Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture (CPT) from 12 to 19 December 2005. CPT/Inf(2007)30, para 46 (CPT Report on Spain 2005).

[8] CPT Report on Spain 2005, para 48.

[9] Response of the Spanish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Spain from 22 to 26 July 2001. CPT/Inf (2003) 23.

[10] The Committee against Torture is a body of independent experts which supervises implementation of the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by states parties.

[11] Conclusions and recommendations of the Committee against Torture: Spain. 23/12/2002. CAT/C/CR/29/3, para 8.

[12] A case can be provisionally discharged ("archivado") at the investigating stage if the prosecuting authorities decide to take no further action upon it. This decision can be appealed and so is a "provisional" rather than "final" measure. However, the case will remain effectively closed unless positive action is taken to re-open it, e.g. via an appeal from the complainant.

[13] Spain operates an "inquisitorial" criminal justice system, in which an investigating judge (juez de instrucción) is responsible for conducting the initial investigations into criminal offences. The task of the investigating judge is to gather all the evidence necessary to prosecute an offence. If the investigating judge deems that there is a valid case to answer, he or she passes the case and all evidence collected on to a trial court to be heard.

[14] Report of the Special Rapporteur on the question of torture, Theo van Boven, E/CN.4/2004/56/Add.2, para 59.

[15] Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture, (CPT) from 22 to 26 July 2001. CPT/Inf (2003) 22, para 6 (CPT Report on Spain 2001).

[16] CPT Report on Spain 2001, para 33.

[17] Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Spain, 10 – 19 March 2005. CommDH(2005)8, para 15 (Commissioner for Human Rights Report on Spain 2005).

[18] CPT General Report 14, para.25.

[19] Commissioner for Human Rights Report on Spain 2005, para 12.

[20] CPT Report on Spain 2005, para 32.

[21] Due to the nature of the charges against Jordi Vilaseca, it was necessary for an official from the national police force to be involved in the operation, as it was outside the competency of the autonomous regional police force.

[22] Full name withheld to protect privacy

[23] UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 2.

[24] Irène Ursoa Parot v. Spain, 2 May 1995, para 10.4.

[25] CPT General Report 14, para 27.

[26] Full name withheld to protect privacy.

27 CPT General Report 12, para 36.

[28] See the 2002 Amnesty International report *Spain - Crisis of Identity: Race-related torture and ill-treatment by state agents* (AI Index: EUR 41/001/2002).

[29] CPT Report on Spain 2005, para.54.

[30] Mossos d'Esquadra police officer interviewed by Amnesty International delegation, 19 June 2007, Barcelona.

[31] UN Code of Conduct for Law Enforcement Officials, GA Resolution 34/169 of 17 December 1979.

[32] Commentary to Article 3 of the UN Code of Conduct for Law Enforcement Officials, GA Resolution 34/169 of 17 December 1979.

[33] UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Article 15.

[34] Commissioner for Human Rights Report on Spain 2005, para 14.

[35] Ben M'Barek v. Tunisia. Committee against Torture, 1996, para 11.10.

[36] Encarnación Blanco Abad v. Spain, Committee against Torture, 1996, para 8.2.

[37] CPT Report on Spain, 2005, para 47.

[38] Recomendación 47/2006, de 7 de junio. BOCG. Cortes Generales. VIII Legislatura. Serie A. Núm. 388, p.423.

[39] "Sudaca" is a derogatory term for someone from South America, used as a racial insult.

[40] Full name withheld to protect privacy.

[41] Decision of provisional discharge, Investigating Court 22 of Barcelona, 2 September 2005, para 13.

[42] Decision of provisional discharge, Investigating Court 22 of Barcelona, 2 September 2005, para 13.

[43] Appeal decision of Provincial Criminal Court of Barcelona, 7 December 2005.

[44] Sentencia No. 303/07, Audiencia Provincial de Madrid, Sección 23a. 25 April 2007.

[45] Autopsy report conducted by the Instituto de Medicina Legal de Almería, 29 July 2005, page 13.

[46] Autopsy report conducted by the Instituto de Medicina Legal de Almería, 29 July 2005, page 13.

[47] Concluding observations of the Human Rights Committee: Spain. 03/04/96. CCPR/C/79/Add.61, para 10.

[48] The 2004 Amnesty International report *España: Acabar con la doble injusticia. Víctimas de tortura y malos tratos sin reparación* (available in Spanish only) contains further examples of cases in which police officers convicted of ill-treatment were granted pardons by the government, including in cases where this was against the recommendation of the sentencing court.

[49] Interview with Amnesty International delegates, 21 March 2007.

[50] Report to the UN General Assembly by the Committee against Torture, UN Doc. A/56/44, paras 97(d) and 120(b).