
amnesty international

**Spain:
Briefing to the Human Rights
Committee**



TABLE OF CONTENTS

| | |
|---|-----------|
| INTRODUCTION | 3 |
| ARTICLES 6 AND 7 IN CONJUNCTION WITH ARTICLE 3: RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT, AND EQUAL RIGHTS OF WOMEN AND MEN | 3 |
| Violence against women by intimate partners or former partners | 3 |
| ARTICLES 6 AND 7 IN CONJUNCTION WITH ARTICLE 2: RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT, RIGHT TO A REMEDY | 8 |
| Use of restraints during deportation: | 8 |
| Impunity for torture and other ill-treatment by law enforcement officials | 9 |
| ARTICLES 7, 9 AND ARTICLE 14: PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT AND RIGHT TO A FAIR TRIAL | 20 |
| Incommunicado detention | 20 |
| ARTICLES 7, 9 AND ARTICLE 13: PROHIBITION OF <i>REFOULEMENT</i>, ARBITRARY DETENTION AND EXPULSION | 32 |
| Rights of migrants, asylum-seekers and refugees | 32 |
| ARTICLES 21 AND 22 IN CONJUNCTION WITH ARTICLE 2: THE RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION, THE RIGHT TO FORM LABOUR UNIONS, AND THE PROHIBITION OF DISCRIMINATION | 35 |

Spain

Briefing to the Human Rights Committee

Introduction

Amnesty International submits this briefing for consideration by the Human Rights Committee in view of its forthcoming examination of Spain's fifth periodic report on measures it has taken to implement the provisions of the International Covenant on Civil and Political Rights (ICCPR).

This briefing summarizes some of Amnesty International's main concerns on Spain, which have been highlighted in a number of reports previously published by the organization. The organization highlights in particular its concerns about the failure of the state to comply fully with its obligations to prevent and prohibit torture and other ill-treatment by law enforcement officials, as required under Article 7 of the ICCPR, and to ensure that allegations of such treatment are independently, impartially and thoroughly investigated, that those responsible are brought to justice and that victims of such treatment receive adequate redress, including reparation, as required by Article 2. The organization is concerned that these failures are creating a climate of impunity. Amnesty International remains concerned, in particular, by the failure of the Spanish authorities to respond positively to the many recommendations of UN bodies, including the Human Rights Committee, on this issue. The briefing also highlights concerns relating to persistent violence against women (despite the positive measures taken by the Spanish authorities to tackle this problem) and violations of the rights of migrants and asylum-seekers.

Articles 6 and 7 in conjunction with Article 3: right to life, prohibition of torture and other ill-treatment, and equal rights of women and men

Violence against women by intimate partners or former partners

The Human Rights Committee has clarified that the obligation to ensure the rights recognized in the Covenant to all individuals requires that States parties take all necessary steps to enable persons to enjoy those rights without discrimination.¹ The obligation to protect women's human rights includes the obligations to ensure effective protection against acts of gender violence committed by governmental agents and private individuals, and access to and effective redress where such violence occurs.

¹ General Comment No. 28: Equality of rights between men and women (article 3)
UN doc.: CCPR/C/21/Rev.1/Add.10, 29 March 2000.

According to government figures for the period 1999-2007, the number of women killed by their partners or former partners increased from 58 women in 2005, 68 in 2006, up to 71 women in the year 2007.² An official report on the characteristics of those who were killed revealed that 30 per cent of the victims had made at least one complaint to police about the man who killed her.³

Amnesty International is concerned that this data reflects the lack of effective protection of women's rights to life and freedom from torture or other cruel, inhuman or degrading treatment or punishment. This lack of protection is exacerbated in the case of women from vulnerable groups and with additional difficulties, such as women who are discriminated against on the grounds of nationality, ethnic origin or migrant status.

Amnesty International considers that the Basic Law 1/2004 on Comprehensive Protection Measures to Tackle Gender-Based Violence (*Ley Orgánica de Medidas de Protección Integral contra la Violencia de Género*, hereinafter Law 1/2004)⁴ has been an important step in improving the institutional response to gender-based violence in Spain. However, the organization is concerned about the non-implementation of some of the rights guaranteed by Law 1/2004, and the fact that, in practice, many women remain unprotected. The organization is particularly concerned by the lack of due diligence in investigating and prosecuting acts of gender-based violence, as well as in protecting women at serious risk of gender-based violence. Amnesty International is also concerned about the special difficulties and obstacles that migrant women who do not have the appropriate documentation face, in accessing justice and specialized services.

In view of these concerns, Amnesty International considers that Spain is not yet adequately ensuring the rights of women who are at risk of or have faced gender-based violence to an effective remedy, as recommended by the Committee when it clarified that, in certain circumstances, it requires States Parties "to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations".⁵

Migrant women victims of gender-based violence

Amnesty International is concerned that migrant women in Spain are at particular risk of gender-based violence and killings in Spain. The death rate of victims per million is much higher for foreigners than for Spaniards. Over the last nine years (1999-2007), the death rate of women was 2.05 per million for Spaniards and 13.18 for foreigners.⁶

² Instituto de la Mujer del Gobierno de España:

http://www.mtas.es/mujer/mujeres/cifras/violencia/muertes_tablas.htm (6 April 2008).

³ "Informe sobre muertes violentas en el ámbito de violencia domestica y de genero en el año 2007", Servicio de Inspección del Consejo General del Poder Judicial, 2008, p. 32.

⁴ Dated 28 December 2004 and published in BOE number 313 (29 December 2004).

⁵ General Comment No. 31 (80) Nature of the General Legal Obligation Imposed on State Parties to the Covenant. Doc de la ONU: CCPR/C/21/Rev.1/Add.13 de 26 May 2004, para.19.

⁶ Instituto de la Mujer del Gobierno de España:

http://www.mtas.es/mujer/mujeres/cifras/violencia/muertes_tablas.htm (6 April 2008).

The lack of family or social networks, language barriers and economic dependency on the aggressor are factors that increase the vulnerability of migrant women. In addition, Amnesty International considers that Instruction 14/2005, issued by the Ministry of the Interior to law enforcement officials in 2005, is a clear disincentive for irregular migrant women to report violence or threats of violence. Instruction 14/2005 orders law enforcement officials to investigate the migration status of foreign national women who report ill-treatment with the aim of beginning expulsion proceedings if a woman is found to be an irregular migrant. The fear of reporting felt by irregular migrant women has serious consequences on the realization of their rights, including the right to life.

Irina P

Irina P, an irregular migrant of Russian origin, visited the local social services department specializing in violence against women 13 times to ask for help to escape from her husband's threats and assaults. Despite the advice given by the social workers, she never reported the situation to the police because she was afraid that her irregular situation in Spain would be brought to light. Irina and her eight-month-old baby were killed by her husband on 28 April 2004.

Access to justice may also be impeded by language barriers. The right to an interpreter is a key issue for victims. Amnesty International is concerned that there is no guarantee of adequate interpreting services in criminal proceedings related to gender-based violence, which impacts negatively on the victim's rights to justice, protection and redress. There is no specialized interpreter service for victims of gender-based violence and interpreters do not receive any specialized training on gender-based violence. Amnesty International has documented cases in which the role of interpreters was a key element, seriously affecting the victims' rights.

Fatou

Fatou, a national Senegalese woman resident in Barcelona with her husband for more than four years, was subject to serious psychological violence and temporary abduction by her husband. When he threatened to take away her legal residence documents and have her returned to Senegal, she fled to France where she was detained by police and expulsion proceedings were initiated against her.

After another temporary abduction by her husband, Fatou reported the situation to the police and told them she wanted to separate from her husband. However, her complaint was closed without further investigation after an initial investigation during which time the interpreter assigned to her reprimanded her. The interpreter told her "it was not violence" and advised Fatou that she should "put up with it, as her mother would have done". A few days later Fatou stated that without a job, a work permit, or any material possessions, "I am nobody, as my husband always told me. I will find an adult person to go with me to ask forgiveness from my husband for pardon, and I will return to him."

Access to legal assistance

Under Article 20 of the Law 1/2004 all victims of gender-based violence have the right to free, immediate and specialized legal assistance. However, Amnesty International has noted that women frequently appear in Court with no legal assistance, and in 48.8 per cent of the cases

of fatalities, victims did not have legal assistance in previous criminal proceedings they had brought before their death.⁷

Law 1/2004 provides victims of domestic violence with free legal assistance, but in practice this assistance is made available only at the trial stage, not for making a complaint or requesting protection measures. This delay in receiving legal assistance may adversely affect the protection of their rights. Amnesty International believes that the lack of adequate funding is the cause of this failure.

Marta

Marta suffered years of physical and psychological violence by her husband, which left her with permanent damage to her breasts. She first met her lawyer 15 minutes before the hearing. They discussed the case in the corridor of the court, but when they entered the hearing the judge told the lawyer that he would have to defend the husband, who had no lawyer, and the Public Prosecutor would represent Marta's interests. The Public Prosecutor did not speak to Marta and called for the case to be closed, claiming the allegations made (threats and violation of a restraining order) did not constitute a criminal offence.

Due diligence in investigation and prosecution

One of the indicators identified by the UN Special Rapporteur on violence against women, its causes and consequences, of a State's compliance with its obligation to prosecute acts of violence against women is the rate of prosecution - "[P]rosecution rates should not only mirror increases in reporting, but also increase if legal and procedural reforms are having the desired impact".⁸ Since 1999 gender-based domestic violence has been a crime which can be prosecuted *ex officio* in Spain. However, Amnesty International considers that the advance of this legal reform contrasts with a lack of diligence in investigating and prosecuting such crimes.

In practice, the victims continue to have responsibility for making the complaint and providing evidence. The lack of action by Public Prosecutors from the earliest stages of proceedings is inconsistent with the grave nature of the crime.

Official figures show that after the introduction of Special Courts for Violence Against Women and specialized Public Prosecutors, created under Law 1/2004, the number of cases closed without further investigation tripled. Provisional decisions to close an investigation reached 10,773 in 2007, up from 3,847 in 2005.⁹

⁷ "Informe sobre muertes violentas en el ámbito de violencia doméstica y de género en el año 2007", Servicio de Inspección del Consejo General del Poder Judicial, 2008, p. 43.

⁸ Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Indicators on violence against women and State response. UN doc: A/HRC/7/6, 29 January 2008, para.92.

⁹ "Datos estadísticos judiciales en aplicación de la Ley Orgánica 1/2004, de medidas de protección integral contra la violencia de género. Periodo desde 29/06/2005 al 30/06/2007". Consejo General del Poder Judicial, 2008, gráfico 10.

Protection measure for victims at risk

In spite of the advances made by Law 1/2004, which requires the authorities to consider the individual risk to each victim, Amnesty International is concerned by the high rate of denial of judicial protection measures to victims in situations of serious risk to life. According to official information, of 71,381 protection orders requested, 16,268 were denied.¹⁰ At the same time, more than 25 per cent of the victims who reported their aggressors to the authorities and were subsequently murdered by them in 2007, did not receive support from the Public Prosecutor when they had requested protection measures. Instead, the Public Prosecutor had advised the protection measure be refused.

Julia Alonso

On 10 July 2005 Julia Alonso made a complaint against her husband for physical assault and death threats. In her complaint she attached the medical report from the health centre, which certified physical injuries and anxiety, as well as fear and concern for her children. The following day, a measure was imposed on the husband that included the prohibition of communication with Julia. Three days later, Julia Alonso certified her complaint and went on to be assessed by the forensic doctor, who confirmed the injuries. Two days later, without consulting with the victim, the Public Prosecutor requested the protection measure be lifted and the case be closed without further investigation. On 14 July, the judge revoked the judicial protection measure, indicating that Julia Alonso's injuries did not correspond with her testimony and were more consistent with the testimony of the accused. Less than one month later, on 7 August, Julia Alonso was murdered by her husband.

Amnesty International is also concerned by the number of women killed each year, despite the judicial protection measures granted in their favour, including removal orders. According to information available¹¹, at least 12 of the women killed in 2007 had a judicial protection measure.

Right to redress

The Law 1/2004 does not contain provisions which guarantee the right of victims of gender based-violence to reparation; there has been no subsequent legislation on this point. Amnesty International is concerned by the difficulties that the majority of victims of gender-based violence face in effectively accessing their right to reparation, including compensation, through the "Law on aid for victims of Violent Crimes and Against Sexual Freedom" (*Ley de Ayudas a Víctimas de delitos violentos y contra la libertad sexual*)¹². This law establishes requirements which can be difficult for victims to meet. Compensation is given only to victims demonstrating serious physical injuries; the effects of psychological violence are not included.

¹⁰ "Datos estadísticos judiciales en aplicación de la Ley Orgánica 1/2004, de medidas de protección integral contra la violencia de género. Periodo desde 29/06/2005 al 30/06/2007". Consejo General del Poder Judicial, 2008, gráfico 3.

¹¹ Centro Reina Sofía para el Estudio de la Violencia, Estadísticas, Femicidios de pareja, descripción de casos, en <http://www.centroreinasofia.es/consultaFemicidios.asp?id=4> (7 April 2008).

¹² Ley 35/1995, de 11 de diciembre (BOE nº 296, de 12 de diciembre de 1995).

Recommendations:

Amnesty International has made the following recommendations to the Spanish Government regarding gender-based violence:

The government should:

- i) Ensure the effective implementation of all rights provided by the Law 1/2004 with no further delay and with all possible resources.
- ii) Eliminate any obstacles restricting access to justice for migrant women. In particular, withdraw the 14/2005 Instruction of the Ministry of Interior and consequently, proceed to order the police agents to comply with their obligation to protect the effectiveness of women's human rights with no exceptions and above any other consideration.
- iii) Ensure that victims of gender-based violence receive specialized legal assistance from the very beginning and throughout the proceedings.
- iv) Ensure that all victims at risk receive adequate judicial protection measures.
- v) Guarantee that the Public Prosecutor and courts work diligently in investigating, prosecuting and sanctioning these crimes, and seriously take into account the victims' needs for protection and right to redress.
- vi) Adopt legislative and other measures in order to guarantee the right to reparation of all victims of gender-based violence and their relatives, which includes compensation, complete rehabilitation and guarantees of non-repetition, applying the principles of equality before the law and non-discrimination.

Articles 6 and 7 in conjunction with Article 2: Right to life, prohibition of torture and other ill-treatment, right to a remedy

Use of restraints during deportation:

Amnesty International continues to have serious concerns regarding the use of force and immobilization techniques employed by law enforcement officers during expulsions. These concerns were raised previously in the 2001 Amnesty International report *Spain: Crisis of Identity* (AI Index: EUR 41/001/2002) which documented various cases of excessive use of force by law enforcement officers during expulsions. Amnesty International is concerned that the recommendations of international organizations relating to regulating the use of force in expulsions¹³ have not been codified in official expulsion procedures ("Procedimiento para el traslado por vía aérea de nacionales de terceros países sobre los que hayan recaído resoluciones de expulsión"). The organization has called on the government to conduct an

¹³ See, for example, the recommendation concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders, 19 September 2001, by the Council of Europe Commissioner for Human Rights; The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 13th General Report covering the period 1 January 2002 to 31 July 2003 (CPT/Inf (2003) 35), section on "Deportation of Foreign Nationals by Air"; Recommendation 1547(2002), January 2002, of the Parliamentary Assembly of the Council of Europe (PACE).

urgent and comprehensive review of expulsion procedures and restraint techniques to ensure that they are revised as necessary so that they comply with international human rights standards. Amnesty International continues to call on the government to devise and implement protocols for expulsion and restraint which meet international standards and to ensure that all law enforcement officers involved in expulsion procedures undergo appropriate training in these techniques.

The following case illustrates Amnesty International's concerns.

Death of Osamuyia Akpitaye during deportation

On 9 June 2007 Osamuyia Akpitaye, an irregular migrant and Nigerian citizen, died during his attempted forcible deportation from Spain to Nigeria. According to witness reports the two law enforcement officers accompanying Osamuyia Akpitaye on the Iberia flight from Madrid to Lagos tied his feet and hands and gagged his mouth, allegedly with adhesive tape, to counteract his resistance to being deported. Some witnesses also claim to have seen police officers beating him. Osamuyia Akpitaye died shortly after take-off. The plane returned to Spain, where it landed at Alicante at approximately 6.30pm. An autopsy determined the cause of his death as asphyxiation. Osamuyia Akpitaye's family claimed that they received no communication from the police or other Spanish authorities to inform them officially of Osamuyia Akpitaye's death. Amnesty International was told by the brother of the deceased man that he learned of the death when he received a telephone call from a friend who was on board the aborted flight to Nigeria and personally witnessed the incident. On 10 June he went to the police station in Torrejón, Madrid, to ask for information but was told that they had no knowledge of his brother's death and only knew he had been deported. They reportedly referred him to the Nigerian embassy in Madrid but when the family made further enquiries they discovered that the embassy had no knowledge of the death. A judicial investigation into the incident is currently underway.

Impunity for torture and other ill-treatment by law enforcement officials

For many years, Amnesty International, and other international and national non-governmental organizations (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) committed by law enforcement officials in Spain and the effective impunity many enjoy in relation to these acts. In recent years Amnesty International has investigated cases in which people reported they had been hit, kicked, punched and verbally abused by police officers, including while handcuffed, both in the street and while in police custody. People detained by police have claimed they have been threatened with a gun or knife, whipped on the soles of their feet, and received death threats from police officers. In one case investigated in 2007 a detainee was told that if he did not cooperate, the police officers would rape his girlfriend; in another, a man lost hearing in one ear for several weeks as a result of the blows to the head he received in custody.

Amnesty International published its most recent report relating to torture and other ill-treatment in Spain, *Adding insult to injury: The effective impunity of police officers in cases of torture and other ill-treatment* (AI Index: EUR 41/006/007), on 14 November 2007 (see appendix). The cases in this report reveal pervasive and structural shortcomings in the prevention, investigation and punishment of ill-treatment. In particular, investigations into allegations of torture and other ill-treatment suffered from an apparent lack of impartiality and objectivity.

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 to take a range of legislative, judicial and administrative measures to prevent ill-treatment. The organization is also concerned that the authorities are failing to meet their obligations under international human rights law to ensure the prompt, independent, impartial and thorough investigation of any case where there is reason to believe ill-treatment may have occurred, as well as their obligation to ensure an effective remedy, including reparation, for victims of ill-treatment.

Javier S

According to the information provided to Amnesty International, 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 reportedly 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 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 allegedly beaten with a truncheon on the chest and punched in the face several times by an officer. 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 reportedly 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 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.”¹⁴ 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.” 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”¹⁵ 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 realized 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.

Lack of independent investigation

Many of the investigations into complaints of ill-treatment that Amnesty International has 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

¹⁴ Decision of provisional discharge, Investigating Court 22 of Barcelona, 2 September 2005, para.13.

¹⁵ Appeal decision of the Provincial Criminal Court of Barcelona, 7 December 2005.

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 standardized 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 European Committee on the Prevention of Torture (CPT)¹⁶ 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.”¹⁷

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.

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. Amnesty International’s research indicates that judges often accept the word of police officers 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, and subsequently provisionally discharge the case without further investigation. As a result, cases are often closed without thorough investigation. While recognizing 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

¹⁶ The Council of Europe’s 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 authorization 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.

¹⁷ CPT General Report 14, para. 25.

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.”¹⁸ Lack, or perceived lack, of impartiality is inconsistent with Spain’s obligations under the ICCPR and other international human rights treaties, which place an obligation on states parties to conduct prompt and impartial investigations into all credible allegations of ill-treatment.¹⁹

Amnesty International’s research also indicates 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.”²⁰ 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).”²¹

Failure to investigate

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.

European Court of Human Rights Chamber Judgment *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’ right under the European Convention on Human Rights (ECHR) to be free from torture and other inhuman or degrading treatment or punishment.

¹⁸ Commissioner for Human Rights Report on Spain 2005, para.14.

¹⁹ In the case of *Ben M'Barek v. Tunisia*, the UN Committee against Torture determined that Articles 12 and 13 of the Convention against Torture 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.

²⁰ *Encarnación Blanco Abad v. Spain*, Committee against Torture, 1996, para. 8.2.

²¹ CPT Report on Spain, 2005, para. 47.

The applicants were arrested in 1992 in connection with investigations into terrorism-related 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 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. 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.

Amnesty International has also raised concern about 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 that ill-treatment may have occurred. In its decision on a complaint against Spain in 1995, the UN Committee against Torture clarified 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."²²

Incomplete or inaccurate medical reports

The respect for the right of detainees to medical care and medical examinations as required while in detention is widely acknowledged, among other things, as an important tool in preventing ill-treatment from occurring. Medical reports accurately reflecting the state of a detained person's health are also of great importance in successful prosecution of those responsible when ill-treatment occurs.

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 practice is contrary to international standards and 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 or accurately report their cause 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. Amnesty International was alarmed to discover that some judges (interviewed in 2007) 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 to the human rights standards elaborated by the CPT.

²² *Irène Ursoa Parot v. Spain*, 2 May 1995, para.10.4.

Lack of safeguards

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 Ertzaintza²³ 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."²⁴

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 in 2007, including police representatives from various trade unions, representatives of the Office of Public Prosecutions, representatives of human rights ombudspersons' offices, ministers and judges. Amnesty International is informed that there are currently plans to introduce widespread video and audio surveillance recording measures in police stations at national and autonomous community level across the country. The organization welcomes these proposals and awaits their full implementation as soon as practicably possible.

Intimidation of complainants

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 pressurize 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 recognized 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

²³ Autonomous regional police force in the Basque Country.

²⁴ CPT General Report 12, para.36.

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.”²⁵

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 proportionate 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.”²⁶ 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.”²⁷ The examples highlighted in Amnesty International’s report, *Adding insult to injury: The effective impunity of police officers in cases of torture and other ill-treatment* (AI Index: EUR 41/006/007), include use of force which goes beyond that which could be considered necessary and proportionate in accordance with international standards.

Inadequate sanctions

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) does 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.

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.”²⁸ This practice has also been criticized by the UN Committee against Torture in its 2005 decision on the case of *Kepa Urra Guridi v Spain*.²⁹

²⁵ CPT Report on Spain 2005, para.54.

²⁶ Mossos d’Esquadra police officer interviewed by Amnesty International delegation, 19 June 2007, Barcelona.

²⁷ UN Code of Conduct for Law Enforcement Officials, GA Resolution 34/169 of 17 December 1979.

²⁸ Concluding observations of the Human Rights Committee: Spain. 3 April 1996. CCPR/C/79/Add.61, para.10.

²⁹ 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.

**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 law enforcement. 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 proportionate 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 and Other Cruel, Inhuman or Degrading Treatment or Punishment, 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. The Committee concluded that this was a further violation.

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 organization, has been accused of ill-treatment in at least four other unrelated cases. Only one of these cases has reached trial, which was ongoing at the time of writing; 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 Amnesty International delegates 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."³⁰

³⁰ Interview with Amnesty International delegates, 21 March 2007.

One of the officers convicted in relation to the ill-treatment of Juan Martínez Galdeano³¹ 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 ill-treatment in Civil Guard custody in July 2005, the officer in question had still been 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 proceedings³² 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.

Authorities' response

The response of the Spanish authorities to allegations of torture and other ill-treatment is a consistent denial that such incidents take place and that such allegations are made in bad faith in order to discredit the law enforcement services and Spanish government. When an act of torture or ill-treatment is acknowledged, it is labelled as an isolated incident. This response was most recently demonstrated in January 2008 following the arrest of Igor Portu, an alleged ETA member, by the Civil Guard on 5 January and his subsequent admission to the Accident and Emergency Department of Donostia Hospital with serious injuries allegedly caused by ill-treatment in custody. Although the First Examining Magistrates' Court of San Sebastián (Juzgado de Instrucción nº 1 de San Sebastián) opened preliminary investigations in order to determine whether a criminal offence could have been committed, the Interior Minister publicly reiterated the Civil Guard's version of events without having carried out any kind of internal investigation into the events and before the conclusions of the judicial investigation were available.

³¹ Juan Martínez Galdeano died on 24 July 2005 after being ill-treated by Civil Guard Officers in Roquetas de Mar, Almería. Three of the eight officers charged were convicted; the remaining five were acquitted. One officer was sentenced to 15 months' imprisonment, and the other two were fined..

³² Report to the UN General Assembly by the Committee against Torture, UN Doc. A/56/44, paras 97(d) and 120(b).

Amnesty International considers that such blanket denials by the authorities, without prior investigation, are an important contributing factor to current impunity. Commenting on similar statements by officials, in 2002 the UN Committee against Torture 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.”³³ During its visit to Spain in July 2001, the CPT gathered “ample evidence, including of a medical nature, consistent with allegations of ill-treatment.”³⁴

Recommendations

Amnesty International has made 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. Amnesty International has called on the Spanish authorities to:

- Give careful consideration to the possibility of creating a fully resourced independent mechanism, to investigate all allegations of serious human rights violations by law enforcement officials, including killings (including fatal shootings), torture, and other ill-treatment, in line with international standards to ensure that investigations are prompt, independent, impartial and thorough.
- 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 organization has also urged the Minister of Interior, and autonomous Counsellors of Interior as appropriate, to:

- 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.
- 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.

The organization has recommended that 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.

³³ Conclusions and recommendations of the Committee against Torture: Spain, 23 December 2002, CAT/C/CR/29/3, para.8.

³⁴ 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.

Amnesty International has also called on the police authorities to:

- 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.

See the full report, *Adding insult to injury: The effective impunity of police officers in cases of torture and other ill-treatment*, for the complete recommendations and details of individual cases.

Articles 7, 9 and Article 14: Prohibition of torture and other ill-treatment and right to a fair trial

Incommunicado detention

In Spain, people held in incommunicado detention may be deprived of effective access to a lawyer, access to a doctor of their own choice, and are unable to inform their family and friends of their detention. Incommunicado detention can be imposed before or after the detainee is brought before a judicial authority. Legislation authorizing incommunicado detention has been maintained and amplified by successive Spanish governments, despite the calls for over a decade by various UN bodies, the CPT, and human rights organizations, to take measures to remove legislation on incommunicado detention from national law. Successive Spanish governments have taken no action to implement these recommendations and in fact have acted in direct opposition to them by extending the time limits for incommunicado detention in 2003, from five to 13 days.

Amnesty International has called on the Spanish authorities to abrogate the existing incommunicado detention legislation and ensure the effective protection of the rights of all persons deprived of their liberty, as set down in international standards.

The use of incommunicado detention has been justified by the Spanish government in the name of national security and public safety. However, echoing the UN Security Council³⁵, the heads of state and government gathered at the UN World Summit in 2005³⁶, the UN General Assembly³⁷, the European Court of Human Rights³⁸ and the Committee of Ministers of the Council of Europe³⁹, Amnesty International has underscored that the measures states take to protect the lives and security of those within its territory, including from the threat of terrorist

³⁵ See, e.g., UN Security Council resolutions 1450; 1456 at para.6; 1566, Preambular para.6.

³⁶ UN World Summit Declaration 2005, para. 85, adopted by the Heads of State and Government gathered at the UN Headquarters from 14-16 September 2005, UN Doc. A/60/L.1, A/RES/60/1.

³⁷ See, e.g., General Assembly resolutions 59/46, 49/60, 51/210.

³⁸ See, e.g., *Aksoy v Turkey*

³⁹ See, e.g., Council of Europe Guidelines on the Protection of Human Rights and the Fight against Terrorism, adopted by the Council of Europe Committee of Ministers on 11 July 2002, H(2002)004. See in particular Guideline II.

acts, must comply fully with international human rights standards. Furthermore, Amnesty International has reminded the Spanish authorities that labelling all allegations of torture or other ill-treatment as part of an organized criminal strategy to discredit the state, without investigating their substance, is a violation of their international obligations to prevent and punish torture and other ill-treatment.⁴⁰

International human rights bodies have repeatedly raised concerns regarding the use of incommunicado detention, and have stated that it is known to facilitate torture and other ill-treatment of detainees.⁴¹ It also violates important rights of detainees to ensure a fair trial, including prompt, effective access to legal representation.

In 1996, the Human Rights Committee urged Spain “to abandon the use of incommunicado detention”, expressing its concern that “persons suspected of belonging to or collaborating with armed groups may be detained incommunicado for up to five days, [and] may not have a lawyer of their own choosing”⁴². The Committee recommended that the legislation prohibiting incommunicado detainees held on terrorism-related charges from appointing their own lawyer be rescinded. In 1997 the UN Committee against Torture (CAT) stated in its concluding observations on Spain that “Notwithstanding the legal guarantees as to the conditions under which it can be imposed, there are cases of prolonged detention incommunicado ... which seems to facilitate the practice of torture. Most of these complaints concern torture inflicted during such periods.”⁴³ The CAT recommended that Spain consider “eliminating instances in which extended detention incommunicado and restrictions of the rights of detainees to be assisted by a defence lawyer of their choice are authorized.”⁴⁴

In 2002 the CAT repeated its concerns, noting that it was “deeply concerned by the fact that incommunicado detention up to a maximum of [then] five days has been maintained” and that “the Committee considers that the incommunicado regime, regardless of the legal safeguards for its application, facilitates the commission of acts of torture and ill-treatment.”⁴⁵ In 2003, a few months after these recommendations were made, the Spanish government increased the timeframe of incommunicado detention from five to a possible total of 13 days for persons held on suspicion of involvement in terrorism-related activities.

The United Nations Special Rapporteur on torture commented in his report on his visit to Spain in 2003 that “torture or ill-treatment is not systematic in Spain, but that the system as it is practised allows torture or ill-treatment to occur, particularly with regard to persons

⁴⁰ Convention against Torture, article 12.

⁴¹ See, for example, Preliminary Observations of the HRC: Peru, UN Doc. CCPR/C/79/Add.67, para.17, 25 July 1996.

⁴² Concluding observations of the Human Rights Committee on Spain, UN Doc: CCPR/C/79/Add.61, 3 April 1996, at paras.12 and 18.

⁴³ Conclusions and recommendations of the Committee against Torture on Spain, 1997, A/53/44, para.131.

⁴⁴ *Ibid*, para.135.

⁴⁵ Conclusions and recommendations of the Committee against Torture on Spain, 23 December 2002, [CAT/C/CR/29/3] para.10.

detained incommunicado in connection with terrorist-related activities".⁴⁶ Noting that "incommunicado detention creates conditions that facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture"⁴⁷ the Special Rapporteur recommended that the incommunicado regime be abrogated. In the most recent follow-up report of the Special Rapporteur, he reiterated "his deep concern over the retention of the incommunicado detention regime (above all, in the counter-terrorism context)."⁴⁸

Mohammed Fahsi

In January 2006, a number of men were arrested in Catalunya in an anti-terrorism operation known as "Chacal". Amnesty International has received information that four of those arrested, Mohammed Mrabet Fahsi, "A", "B", and "C", were allegedly subjected to torture and other ill-treatment. Amnesty International is concerned that although these allegations were made to the investigating judge, neither he nor the public prosecutor opened an investigation into them.

According to the information received by Amnesty International Mohammed Mrabet Fahsi, "A", "B", and "C" were arrested separately by hooded Civil Guard officers at their homes, at approximately 2am on 10 January 2006. All four men have made allegations that they were subjected to torture and other ill-treatment while in incommunicado detention, including forced exercise and being forced to remain standing to the point of exhaustion, sleep deprivation, exposure to severe cold, blindfolding, hallucinogenic drugs, humiliation of a sexual nature, beatings, threats of violence, threats (including threats of sexual violence) against family members, racist and islamophobic verbal abuse, insults and intimidation, and being forbidden to wash.

According to the information received by Amnesty International from Mohammed Mrabet Fahsi, at approximately 2am on 10 January 2006 a number of hooded Civil Guard officers entered his house in Vilanova i la Geltrú (Barcelona) after breaking down the door. He says that they threatened him with a gun and insulted him, before handcuffing him and covering his head. He was told he was under arrest for suspected collaboration with an armed terrorist group and instructed to sign a search warrant, which he did. His house was searched and at approximately 9am he was taken to the shop that he owned and told to sign another search warrant. The shop and storage building were searched. He was then taken, blindfolded, by car to Madrid where he was held in incommunicado detention for four days at the Guzmán el Bueno Civil Guard headquarters, before being remanded into pre-trial detention on the orders of the investigating judge.

Mohammed Mrabet Fahsi told Amnesty International that upon arrival at the Civil Guard headquarters he was treated in a threatening, aggressive and insulting manner. He was made to strip to his underwear (while still blindfolded) and one of the Civil Guard officers present said, "How strange, they haven't hit you. There are no marks". He then lowered Mohammed

⁴⁶ E/CN.4/2004/56/Add.2, 6 February 2004 Report of the Special Rapporteur on the question of torture, Addendum, Visit to Spain, UN doc: E/CN.4/2004/56/Add.2, at para.41.

⁴⁷ Ibid, para.66.

⁴⁸ A/HRC/7/3/Add.2, 18 February 2008, para.561.

Mrabet Fahsi's underwear and the Civil Guard officers laughed at him and told him "nice arse" and "we're going to have a lot of fun together".

He was then taken to a cell in a basement area at the end of several corridors. He said he was insulted and pushed against the walls as he walked. Civil Guard officers racially insulted him and told him, "We've ruined your fiesta del cordero [Eid al Adha, a holy Muslim festival], haven't we, you faggot?". He was made to stand in the cell with his hands on the wall and back to the door while his blindfold was removed and told to remain in that position. Every time a Civil Guard officer came to the cell Mohammed Mrabet Fahsi had to do press-ups. The cell had no toilet facilities, ventilation, water or light. It was approximately 2m by 3m square and contained a mattress and blanket. Mohammed Mrabet Fahsi believes there was a camera in the cell because every time he tried to sit down a Civil Guard officer would come to the cell and make him stand again. Mohammed Mrabet Fahsi says that during his period in incommunicado detention he was not allowed to pray, wash or use toilet paper when he went to the toilet. Whenever he left the cell to go to the toilet he was blindfolded and he says the Civil Guard officers deliberately intimidated him, insulted and laughed at him. He says he received food once on the first day in detention and twice on the second two days. He had to eat immediately or the food would be taken away within a few minutes.

Mohammed Mrabet Fahsi was taken out of his cell for questioning, still blindfolded. He was told if he cooperated with the Civil Guard they would ask the public prosecutor to reduce his sentence, but if he did not cooperate they would have it increased. He says they told him his wife and children would be sent to Morocco. He was then questioned about his educational background, his family, and his friends and acquaintances in Vilanova i la Geltrú. The second time Mohammed Mrabet Fahsi was taken for questioning he fainted and could not remember what he was asked. He heard the sound of an aerosol spray and believes he was drugged.

When he returned to his cell, Mohammed Mrabet Fahsi says he became aware that other people he knew were also being held in the cells because he heard their voices and he says he heard them being beaten. He told Amnesty International that Civil Guard officers kicked and hit the cell doors and insulted and threatened the detainees continuously. Due to the absence of light he did not know what time of day or night it was. He says that he was visited by a forensic doctor who asked if he was being treated correctly and he told her he was being ill-treated. He says she replied that it was impossible and he was exaggerating.

On 13 January 2006 Mohammed Mrabet Fahsi was taken from his cell, given his own clothes to dress in, and told he was being sent back to Morocco. He says the Civil Guard officers laughed at his physical state because he had not been able to wash for the period that he was in detention. He was taken to the National Criminal Court (Audiencia Nacional) and appeared before the judge after a considerable delay. The judge remanded him in pre-trial detention and he was taken to Soto del Real prison where, on 14 January 2006, he was finally able to contact his family. He says he was kept in isolation until 21 February 2006 when he was sent to Mansilla de las Mulas prison (León) and held in isolation for another year before being moved into an area with other prisoners, where he currently remains.

According to information received by Amnesty International, the duty roster lawyer acting for Mohammed Mrabet Fahsi first met his client at the Guzmán el Bueno facility at 3am on 13 January 2006, a few hours before he was due to appear before the investigating judge who then remanded him in pre-trial detention. The lawyer and his client were not allowed to speak to each other. The lawyer stated that he saw Mohammed Mrabet Fahsi and a group of other people being held in an area beyond the Civil Guard headquarters of Guzmán el Bueno behind an old garage, in a brightly lit "room within a room". He said that the detainees were blindfolded, handcuffed and crouched on the floor. He says they were dirty and dishevelled, and when he spoke to them later he discovered they had no idea what time of day or night it was.

"A" was arrested at his own home in the same manner and the same time as Mohammed Mrabet Fahsi. He says that when the Civil Guard broke down the door to his house he thought they were burglars and he threw himself at one of them in order to protect his children and his wife. He says the Civil Guard officers hit him, including with metal torches, on the back and head. He thought they had fractured his skull. He was made to kneel in the kitchen and his hands were tied. He was told he was accused of belonging to an Islamic terrorist group. He says the Civil Guard officers searched his house (without his presence, as he was forced to remain in one room) and broke many things as they did so, and took away all books in Arabic, including the Qur'an. He was afraid they would hurt his wife or take his children away.

"A" says that the Civil Guard officers insulted him and made him say "Viva Franco". They took photographs of him on their mobile phones and made him listen to the voice of someone shouting in Arabic and who appeared to be subjected to torture. He says they told him he would find out why the man was shouting "when you get there". He was in a lot of pain around the neck, back and head as a result of the injuries suffered during his arrest. He later discovered that he had a broken finger.

"A" was then taken to Madrid in a police car. During the journey he was handcuffed with his hands behind his back and made to keep his head between his legs. He says the position was extremely uncomfortable due to the injuries he had received and he found it impossible to stay in that posture but if he asked for the handcuffs to be removed, or began to raise his head, one of the Civil Guard officers next to him hit him. They insulted and threatened him and told him they were "taking him somewhere even worse".

Upon arrival at Guzmán el Bueno Civil Guard headquarters "A" was strip-searched and taken barefoot to a cell, which he says was very cold. Although he was allowed to sleep for a while (he does not know how long) he says after that a bright light was turned on in the cell, which remained lit constantly for the entire period he was in detention (which he later learnt was four days). He says he was unable to sleep during this period because he was forced to remain standing or do push-ups on command. He says he lost all sense of time. He could hear the voices of other detainees. When he went to the toilet he was not allowed to wash or use toilet paper. He believes this was to prevent him from cleaning himself properly in order to pray.

"A" says that when he was taken out of the cell to be interrogated the Civil Guard officers asked him where he had injuries and grabbed his broken finger. During the interrogations

(which occurred with no lawyer present) he says he was forced to do push-ups while naked, that the officers hit him and threatened to rape his wife, and told him he would never see his children again. He says the officers insulted him personally and all Muslims, saying "You bloody Arabs, you all deserve to die". They made him insult God and the Prophet Mohammed, and to say the Lord's Prayer and "Viva Franco". He says the Civil Guard officers wanted him to incriminate the other detainees.

"B" was arrested at his home in the same manner and at the same time. He says when the Civil Guard officers entered his house they immediately punched him twice in the face, threw him to the ground and handcuffed him. He was told he was under arrest for robbery and drug dealing. His house was searched and his computer and various documents were seized. He was then taken to Madrid, with his hands handcuffed behind his back, his eyes blindfolded and his ears blocked throughout the journey.

Upon arrival at the Civil Guard headquarters of Guzmán el Bueno he was insulted and threatened by Civil Guard officers. He was made to strip to his underwear and taken to a dark, very cold cell where he was told to stand facing the wall with his hands in the air. If he tried to move he says he was hit by Civil Guard officers. He was also made to do push-ups. He did not know if it was day or night. He remained in this situation for what he later learnt was four days.

He was taken for questioning and told he was accused of terrorism-related charges. He was blindfolded throughout. He says if he gave an answer that the Civil Guard officers did not like he was hit on the head. He was told to incriminate the other detainees and if not he would go to prison for a long time.

The duty roster lawyer appointed to represent "B" told Amnesty International that when she visited her client in incommunicado detention (in the Guzmán el Bueno facility) on 11 and 12 January 2006 she saw the extremely distressed state that he was in and noted the freezing cold temperature where the detainees were held. She noted that despite the cold temperature "B" had no shoes on either of the two occasions she met with him there. When "B" made his police statement, she says that she was made to sit on a chair behind her client where he could not see her and he was not allowed to turn to look at her. None of the Civil Guard officers present was in uniform. "B" subsequently told his lawyer about the ill-treatment that he had suffered and she advised him that he should submit a criminal complaint to the investigating court. However, he did not do so as he was too afraid of possible retaliation against himself or his family.

"C", another of those arrested as part of the same operation, has made very similar allegations. He says he was taken to Madrid from Barcelona with his hands cuffed behind his back and with his head forced between his legs. During detention in the Civil Guard headquarters of Guzmán el Bueno he was forced to do push-ups and he says he was beaten when he could no longer continue. He says he was not allowed to sleep for four days, that the light was on in his cell constantly, that he was not allowed to clean himself after using the toilet, that he did not know what time of day or night it was, and that he was forced to stand facing the wall with his hands raised while Civil Guard officers shouted at him and told him his wife would be forced into prostitution after he was sent to prison. He says when he was given food and water he had

only five minutes to eat before he once again had to stand facing the wall. He says something "like incense" was sprayed into his cell and he began to hallucinate, seeing images of his children on the wall. He says the Civil Guard officers pressured him to incriminate the other detainees.

Following their appearance before the investigating judge the detainees were remanded into pre-trial detention. "A" and "B" were released on bail in November 2006 pending the conclusion of the judicial investigation, and "C" was released on bail in July 2006. According to Amnesty International's sources, Mohammed Mrabet Fahsi, is still in pre-trial detention. On 23 October 2007 the investigating judge issued an indictment (auto de procesamiento sumario) against these four men and 18 others on charges of membership of a terrorist group and collaboration with a terrorist group, but the prosecutor's office has not yet formalized the charges and so it is still not certain if or when the case will come to trial.

According to lawyers acting for the detainees, allegations of ill-treatment have been made during declarations before the investigating judge, including at a bail hearing for Mohammed Mrabet Fahsi and another detainee on 8 January 2007, and in written submissions to the court from the outset of their detention. However, no criminal investigation into the allegations of torture or other ill-treatment of these men has ever been opened. Amnesty International contacted both the General Council of the Judiciary and the Public Prosecutor's Office to ask why no action had been taken. The Public Prosecutor's Office responded that they considered the allegations to be "part of a deliberate strategy commonly seen in organised criminal groups" and saw no evidence of ill-treatment. The General Council of the Judiciary reported that the investigating judge to whom the allegations of ill-treatment had been made "did not see sufficient evidence to open an investigation". Amnesty International considers the decision of the authorities, to discredit such serious allegations without conducting any form of investigation, to be a serious violation of their international human rights obligations and national legislation.

Current legislation

Under the current Code of Criminal Procedure, an investigating judge has the power, on request of the police, to order a detainee to be held incommunicado for up to five days in any case and for up to a total of 13 days if the suspect has been detained on suspicion of terrorism-related offences.⁴⁹ This 13-day period consists of a maximum five-day phase of incommunicado detention in police custody, which can be extended on orders of the investigating judge by a further five-day period of incommunicado detention on remand (provisional imprisonment). A further three-day period of incommunicado detention may be imposed on a remand prisoner on orders of the judge at any time during the investigation after the original (10-day) incommunicado period has expired.

⁴⁹ Code of Criminal Procedure, article 509.2.

Under the *incomunicado* regime, the rights of detainees are restricted⁵⁰ in various manners which may be inconsistent with the requirements of international human rights law and standards.⁵¹ These include the following:

- Individuals held *incomunicado* do not have the right to be assisted by a lawyer of their own choice. Legal assistance is provided by a duty lawyer appointed by the Bar Association, on request of the police.
- Individuals held *incomunicado* do not have the right to consult with a lawyer in private at any time during their *incomunicado* detention (both in police custody and on remand).
- Individuals held *incomunicado* do not have the right to communicate, or have communicated, to a family member or other person of their choice the fact and place of their detention. Foreign nationals do not have the right to have such information communicated to their consulate.
- Individuals held *incomunicado* do not have the right to a medical examination by a doctor of their own choice.⁵²
- Individuals held on suspicion of involvement in terrorism-related offences or organized crime - whether or not they are being held *incomunicado* – may be held in police custody for up to five days (120 hours) after arrest before being presented to a judicial authority.

Lack of effective legal assistance

Individuals being held *incomunicado* may not be represented by a lawyer of their own choice. A duty lawyer is assigned to the detainee by the Bar Association, on the request of the police. Although this lawyer must be present for “formal” police interrogations and when the detainee makes a statement to police, in practice *incomunicado* detainees are also questioned “informally” by police with no lawyer present. The results of any interrogation conducted without a lawyer present are not admissible in court, but may nonetheless prejudice an individual’s defence. The assigned lawyer is not permitted to communicate with their client in private at any time during the period of *incomunicado* detention, both within police custody and on remand.

⁵⁰ Code of Criminal Procedure, article 527.

⁵¹ Relevant treaties and standards include the International Covenant on Civil and Political Rights (ICCPR, Articles 9 and 14) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, Articles 5 and 6), the UN Basic Principles for the Treatment of Prisoners; the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the European Prison Rules; the 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; and the Standard Minimum Rules for the Treatment of Prisoners.

⁵² *Incomunicado* detainees may, however, request a medical examination by a second state-appointed doctor (Article 510 CPP).

The Human Rights Committee has interpreted Article 14(3)(b) of the ICCPR to require “counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications”.⁵³ In 1996 the Committee, in its Concluding Observations on Spain’s fourth periodic report, emphasized that the provisions allowing for incommunicado detention up to five days without a lawyer of choice “are not in conformity with articles 9 and 14 of the Covenant,”⁵⁴ and urged the abandonment of the use of incommunicado detention. In 1997 the CAT urged the Spanish government to consider abolition of the restrictions on the right of detainees to a lawyer of their choice.⁵⁵

The CPT has expressed concern that detainees held incommunicado could not consult in private with the officially appointed lawyer either before or after making their statements to police. According to the CPT, “the core of the notion of access to legal assistance for persons in police custody is the possibility for a detainee to consult in private with a lawyer, and in particular during the period immediately following his loss of liberty.”⁵⁶ The CPT has therefore recommended that detainees be granted the right “as from the outset of the period of custody, to consult in private with a lawyer, it being understood that, in the case of a detainee held incommunicado, the lawyer shall be officially appointed on his behalf”.⁵⁷ Where a lawyer is appointed on behalf of a detainee but is unable to consult with their client, as is the case in Spain for incommunicado detainees, the CPT has stated that “Under such circumstances it is difficult to speak of an effective right to legal assistance; the officially appointed lawyer can best be described as an observer”.⁵⁸

Judicial supervision

Under Spanish law, there is no obligation for the judge personally to see a detainee held on terrorism-related charges (whether or not they are held incommunicado) until five days after their arrest. This violates the requirement in Article 9(3) of the ICCPR and Article 5(3) of the ECHR that detainees must be brought “promptly” before a judge. Whilst international standards do not expressly define the meaning of “promptly”, the Human Rights Committee has stated that “any delays should not exceed a few days”⁵⁹. The European Court of Human Rights has ruled that detaining a person for four days and six hours before bringing him before a judge was not prompt access.⁶⁰

⁵³ Human Rights Committee General Comment 32, on Article 14 of the ICCPR, 23 August 2007, UN Doc: CCPR/C/GC/32.

⁵⁴ CCPR/C/79/Add.61, para.12.

⁵⁵ Conclusions and recommendations of the Committee against Torture on Spain, 1997, para.135

⁵⁶ Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 12 April 1991 (hereinafter CPT Report 1991), para.50.

⁵⁷ Ibid., para.52.

⁵⁸ Ibid., para.51.

⁵⁹ Human Rights Committee General Comment No. 8, U.N. Doc. HRI/GEN/1/Rev.1 at 8 (1994), para.2.

⁶⁰ *Brogan et al. v. United Kingdom*, 29 November 1988, 145b Ser.A 33 at 62.

For a detainee to be held *incommunicado*, the law enforcement agency responsible for the individual's arrest must make a request to the investigating judge for *incommunicado* measures to be imposed within 24 hours after the arrest. The judge has a further 24 hours to grant or deny this request. However, the detainee is not presented before the judge when this decision is made, either initially or if it is extended.

Every order for *incommunicado* detention must be substantiated in writing (*mediante comunicación motivada*) by the competent judge in each individual case and each time it is extended. However, despite this clear requirement, according to the findings of the CPT, "law enforcement agencies systematically request that persons arrested in relation to terrorist activities be held *incommunicado* and ... the competent judges systematically grant such requests".⁶¹ Furthermore, "the reasons given by the judge for ordering *incommunicado* detention tend to be brief and of a stereotyped nature, and ... the decision is granted for the maximum period of detention".

Article 520bis of the Code of Criminal Procedure does provide for ongoing judicial supervision of the detainee during *incommunicado* detention, granting a judge the power to request information at any time during the *incommunicado* detention period, or seek information personally or by delegation, concerning the detainee's situation. However, this is left to the judge's individual discretion and in practice judges rarely appear to avail themselves of this power.

Lack of access to doctor of own choice

Detainees held *incommunicado* may see court-appointed forensic doctors every day but are not allowed to be examined by a doctor of their own choice. They may request a medical examination by a second doctor, but s/he will also be state-appointed. The CPT has repeatedly recommended to the Spanish authorities that, in addition to being examined by a state-appointed forensic doctor, detainees held *incommunicado* should be granted the right to be examined by a doctor of their own choice on request (in the presence of the state-appointed doctor).⁶² In its concluding observations on Spain's fourth periodic report, the CAT also recommended that individuals held in *incommunicado* detention receive a "joint examination by a forensic physician and a physician chosen by the detainee".⁶³ In his most recent follow-up report on Spain (February 2008) the Special Rapporteur on torture noted positively that individual judges had, on occasion, allowed *incommunicado* detainees to be examined by a doctor of their own choice, but that the Spanish authorities had failed to apply this measure in a systematic manner.⁶⁴

⁶¹ Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 22 April 1994 (hereinafter CPT Report 1994), para.62.

⁶² See CPT report 1991 para.57; Report of Visit of the CPT to Spain from 22 November to 4 December 1998 para.26; Report of Visit of the CPT to Spain from 22 to 26 July 2001 para.9; and Report of Visit of the CPT to Spain from 22 July to 1 August 2003 para.25..

⁶³ Conclusions and recommendations of the Committee against Torture on Spain, 23 December 2002, para.14(b).

⁶⁴ UN Doc: A/HRC/7/3/Add.2, paras.561 and 614.

The effective exercise of the right of detainees to medical care and medical examinations while in detention is an important tool in preventing ill-treatment, and medical reports produced during this time are of great importance in successfully prosecuting those responsible when ill-treatment occurs. However, Amnesty International's research has shown that it is not uncommon for police officers to remain present during the medical examination of the detainee, which is likely to intimidate the detainee into remaining silent about any ill-treatment suffered. Consequently, forensic medical reports do not always accurately and completely reflect the detainee's physical and mental state at the time of examination. Even when police officers are not present, detainees may be afraid to speak to a state-appointed doctor about any injuries caused by torture or other ill-treatment during incommunicado detention, as they perceive the doctor to be part of the same authority structure as the police officers inflicting the ill-treatment.⁶⁵

Lack of notification to family members

The rights of detainees to communicate with others and to receive visits are fundamental safeguards against torture and other ill-treatment. According to international standards, anyone who is arrested has the right to inform, or have their family or other person of their choice informed, of their detention and location. This notification must happen immediately, or, in exceptional circumstances and when vital for the integrity of the police investigation, with the minimum possible delay. However, under the current Spanish legislation, incommunicado detainees are not able to communicate, or have this information communicated on their behalf, for the duration of the incommunicado period.

The Human Rights Committee has stated that people arrested or detained on criminal charges must be permitted to contact their families "from the moment of apprehension"⁶⁶ and where this is not possible has called for "the mandatory notification of relatives of detainees without delay".⁶⁷ The Special Rapporteur on torture has recommended the immediate notification of relatives and, "In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours".⁶⁸ The CPT stated that the Spanish limit (which was five days at the time of the CPT's statement and is now more than double that) "is not justifiable"⁶⁹ and called for this period to be reduced "substantially". It recommended that 48 hours should be the maximum time period during which a detainee should be denied communication with family.⁷⁰

⁶⁵ See Amnesty International's report *Spain: Adding insult to injury*

⁶⁶ Human Rights Committee Concluding observations on Democratic People's Republic of Korea, 2001, UN Doc CCPR/CO/72/PRK, para.18.

⁶⁷ Human Rights Committee Concluding observations on India, 1997, UN Doc CCPR/C/79/Add.81, para.23.

⁶⁸ Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment 2001, UN Doc A/56/156, para.39(f).

⁶⁹ CPT Report 1994, para.60.

⁷⁰ Ibid.

Recommendations

Amnesty International considers that the incommunicado regime in Spanish law is a violation of Spain's obligations under international human rights law both in theory and practice. The continuing allegations of torture and other ill-treatment made by detainees who have been held incommunicado demonstrate the grave consequences detention in this regime may have. Amnesty International has called on the Spanish authorities to abrogate the existing incommunicado detention legislation and ensure the effective protection of the rights of *all* persons deprived of their liberty, as set down in international standards. The organization has called on:

the Spanish parliament to:

- End the use of incommunicado detention by immediately abrogating Articles 509, 520bis and 527 of the Code of Criminal Procedure (CCP), which authorize and govern the use of incommunicado detention;
- Take measures 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. All interrogations should be video- and audio-recorded. These recordings must be kept in a secure facility for a reasonable period of time in order to ensure they are available by investigators and defence lawyers if so required.

the Spanish judicial authorities to:

- Ensure all detainees are brought before the judge before a decision is taken to authorize or extend detention;
- Ensure judges take full advantage of their powers to supervise the condition of detainees under their responsibility, including by personal visits to places of detention where appropriate.

the Spanish law enforcement agencies to:

- Ensure all persons deprived of their liberty enjoy the right to consult with a lawyer in private, and to have a lawyer present during questioning and the making of statements, from the outset of detention and throughout the period in custody;
- Ensure law enforcement officers refrain from questioning detainees without a lawyer present;
- Ensure all detainees enjoy the right to medical examinations by a doctor, including by a doctor of their own choice if so requested. Medical exams should be conducted out of the hearing and, unless otherwise requested by the doctor in a particular case, out of the sight of law enforcement officials;
- Ensure all detainees are brought before a judicial authority at the earliest opportunity;
- Ensure all detainees are able to exercise their right to notify a relative or other person of their choice or have the person notified of the fact and place of their detention without delay.

Articles 7, 9 and Article 13: prohibition of *refoulement*, arbitrary detention and expulsion

Rights of migrants, asylum-seekers and refugees

Amnesty International is concerned that the rights of migrants, asylum-seekers and refugees in Spain are being violated by measures aimed at controlling migration. Such measures have included unprecedented efforts to impede the entry of undocumented persons through the southern border (Canary Islands, Ceuta and Melilla and the Andalusian coast) employing practices that undermine human rights obligations including the principle of *non-refoulement*.

These policies not only create obstacles for those fleeing areas where they are at risk of human rights violations in order to seek asylum, but also lead to increasingly grave consequences for migrants who, due to the nature of the obstacles faced in migrating, have been forced to travel dangerous routes by unsafe means creating a greater risk to their lives. These risks include the possibility of suffering abuses at the hands of criminal networks and various other agents during their migratory journey, including officials of countries that have established agreements on migratory control with Spain.

According to the Review of the Fight against Illegal Immigration (*Balance de la Lucha contra la Inmigración Ilegal*), presented by the Ministry of the Interior in January 2008, there was a decrease in the number of irregular immigrants who had arrived in Spain by boat from 38,180 in 2006 to 18,057 in 2007 (-53.9 per cent). In 2006 there were a total of 52,814 repatriations⁷¹ while in 2007 the figure rose to 55,938 (an increase of 6 per cent). According to official statements, these results express a high level of “effectiveness” of the adopted measures, highlighting the effectiveness of maritime barriers with measures financed by Spain and the EU, including the participation of Frontex (the European Agency for the Management of Operational Cooperation at the External Borders), as well as “cooperation agreements” with various African countries, especially those on the west coast of the continent, including: Morocco, Algeria, Mauritania, Senegal, Guinea Bissau, Equatorial Guinea, Mali, Cape Verde, Ghana, and the Gambia. The human cost of these measures and the impact on the human rights of migrants and refugees are not part of the Review. Amnesty International is concerned by the serious human rights violations committed in connection with the interception, detention, and expulsion of foreigners - some of whom are seeking international protection - and by extraterritorial procedures that undermine the principle of *non-refoulement* and other obligations of international protection.

Marine I Case

On 30 January 2007, the Spanish sea rescue service intercepted Marine I off the coast of Mauritania, with 369 people aboard. The passengers, believed to be from Asia and Sub-Saharan Africa, were travelling to the Canary Islands. The Spanish rescue service assisted the boat to a position 12 miles off the coast of Mauritania. The boat remained stranded there for

⁷¹ Excluding Romanians and Bulgarians whose respective countries joined the European Union on January 2007.

almost two weeks until the Mauritanian and Spanish authorities agreed on 12 February to allow the boat to land in Mauritania. Part of the agreement allowed the Spanish authorities to manage the welfare and processing of the migrants and asylum-seekers in Mauritania. The Spanish authorities agreed to process the asylum claims of 10 Sri Lankans on board, who were transferred to the Canary Islands along with 25 others. However, despite a positive report from UNHCR, the UN refugee agency, the asylum claims were not admitted into the Spanish asylum procedure and all 10 individuals were deported on 25 March 2007. In April it was reported that of the 369 people aboard *Marine I*, 35 were returned to Guinea, 161 to India and 115 to Pakistan. Twenty-three people reportedly remained in a hangar in Mauritania under the effective control of Spanish authorities in conditions of detention that did not comply with Spanish law. On 18 May, the 23 were transferred to a detention centre under Mauritanian jurisdiction, and in June 2007, 17 of them were returned to Pakistan. The remaining six were transferred to Melilla, Spain, to receive psychological treatment due to their experience in custody.

Asylum determination and expulsion proceedings

A total of 7,662 asylum applications were filed in 2007⁷², an increase from 5,297 in 2006. The number of applications made by nationals of Iraq increased from 41 in 2005, 42 in 2006 to 1,598 in 2007⁷³. Without this increase of applications by Iraqi nationals, the total number of asylum applications in 2007 is roughly constant at the average annual level since the beginning of the decade. Of 7,581 initial applications during 2007, 3,454 were accepted for consideration and 4,127 were rejected. This represents an acceptance rate into the asylum process of 45.56 per cent (down from 58.28 per cent in 2006). Only 204 applications for refugee status were granted in 2007 (a recognition rate of 3.14 per cent, down from 3.72 per cent – 168 successful applications – in 2006).

In 2006, as a consequence of the arrival of a large number of asylum-seekers and migrants in the Canary Islands, the asylum determination procedures – already the subject of concern – were put under extreme pressure. Amnesty International raised concerns about restricted access to legal assistance and interpretation services, as well as accelerated deportation processes⁷⁴. Although Amnesty International has recognized the positive efforts by the authorities to deal with the arrival of migrants in the Canary Islands, the organization continues to have serious concerns about legal rights and guarantees. With respect to Ceuta and Melilla, two entry points where migratory pressure has reduced during the last two years, the organization is still concerned about restricted access to asylum procedures, deficiencies in the identification process of potential refugees, inadequate information provided to migrants and asylum-seekers upon arrival, and the inadequate provision of legal assistance and interpretation services.

⁷² Asylum and Refugee Office (Oficina de Asilo y Refugio), Asylum Bulletin, 2007, provisional data until publication of annual report. Data obtained from database on 14 January 2008..

⁷³ <http://extranjeros.mtas.es/es/general/Anuario2005.pdf>

⁷⁴ Amnesty International Report, 2007, *The State of Legal Rights in the World*. Entry about Spain accessible at <http://thereport.amnesty.org/es/Regions/Europe-and-Central-Asia/Spain>.

Since 2002, Amnesty International has documented instances of illegal and irregular expulsions at the Spanish/Moroccan border. The number of people that may have been expelled outside official procedures is not known. It is also unknown whether refugees and asylum-seekers were among those expelled. In October 2005, Amnesty International received reports of human rights violations against people who had attempted to cross the fence that separates Morocco from Ceuta and Melilla, including excessive use of force by law enforcement officials, collective expulsions, and immediate and illegal expulsions that violated the principle of *non-refoulement*. Thirteen migrants and possible asylum-seekers died in these incidents. Amnesty International has been unable to obtain information from the Spanish or Moroccan authorities concerning the existence and/or outcome of investigations into these events.⁷⁵

Repatriation of unaccompanied minors

Amnesty International has also raised concerns with the Spanish authorities about the treatment of unaccompanied minors and the lack of safeguards in the administrative procedures that determine their repatriation, including, in some cases, no provision of legal assistance to the minor. Amnesty International has also raised particular concerns about cases in which the child's family has not been contacted prior to the repatriation. According to data from the Executive Office of Immigration (Fiscalía de Extranjería), during 2006 1,300 repatriation proceedings were initiated for minors - the majority of Moroccan origin - and in 111 cases repatriation was approved. In 2007, 27 minors were returned to their country of origin.⁷⁶ In the last two years, several rulings on appeals against decisions granting repatriation for unaccompanied foreign minors have noted serious irregularities that put the safety of minors at risk and do not take into account the best interests of the child.

Recommendations

On the subject of asylum and immigration, Amnesty International has recommended that the Spanish government take action:

- To guarantee, through legislation and in practice, effective access to fair and satisfactory asylum procedures.
- To respect the principle of *non-refoulement* in every act of migratory control, including operations of interception in the high seas and in territorial waters of countries from which migration originates or countries with high immigration transit.
- To respect and enforce the existing obligations with regard to the protection of unaccompanied minors, ceasing actions that put the security of minors at risk without taking into account the minor's best interest, and to apply adequate measures to correctly identify minors.

⁷⁵ See Amnesty International's report *Spain: Adding insult to injury*

⁷⁶ Report by the Department of the Interior (Ministerio del Interior) on 8 February 2008, sent by the Police Headquarters and the Department of Homeland Security in response to Amnesty International's request for information.

- To adopt and apply rules and norms on the use of force and firearms by law enforcement officials in conformity with the UN Code of Conduct for Law Enforcement Officials.
- To guarantee that law enforcement officials receive adequate training on the rules and norms that limit the use of force and firearms.
- To investigate promptly, thoroughly, impartially and independently every incident where lethal force has been used by agents of the state in order to determine whether excessive force was used and the lawfulness of any resulting death.
- To ensure that no summary expulsions are carried out with regard to people at the border, avoid collective expulsions, and guarantee that each expulsion or repatriation is carried out in a way that respects the human rights of the person, and that it is done safely and with respect to their dignity.

Articles 21 and 22 in conjunction with Article 2: The right to freedom of assembly and association, the right to form labour unions, and the prohibition of discrimination

In 2007, the Constitutional Court (*Tribunal Constitucional*) declared unconstitutional⁷⁷ various articles of the Organic Law (Ley Orgánica) 8/2000⁷⁸, which restricted migrants' rights to assembly, to association, and to form labour unions, by granting the exercise of those rights only to those who have obtained authorization to reside or stay in Spain. The judgment demanded that the legislator "*establish, in a reasonable time period, conditions permitting the exercise of the right to assembly, to association, and to form labor unions for aliens who lack the corresponding authorization to reside or stay in Spain*". The judgment also declared unconstitutional those articles which denied the right to further education and free legal assistance to irregular migrants.

⁷⁷ See judgment 236/2007 of 7 November 2007

⁷⁸ Of 22 December 2000, reforming the Organic Law 4/2000 of January 11 on Rights and Freedoms of Aliens in Spain and their Social Integration.