

THE WORLD ORGANISATION AGAINST TORTURE (OMCT) COORDINATES THE ACTIVITIES OF THE SOS-TORTURE NETWORK, which is the world's largest coalition of non-governmental organisations fighting against torture and ill-treatment, arbitrary detention, extrajudicial executions, forced disappearances, and other serious human rights violations. OMCT's growing global network currently includes 282 local, national, and regional organisations in 92 countries spanning all regions of the world. An important aspect of OMCT's mandate is to respond to the advocacy and capacity-building needs of its network members, including the need to develop effective international strategies to assist victims of torture and ill-treatment and to support them in their struggle to end torture and ill-treatment. As part of the "Follow-up of Status International Commitments" programme the OMCT published this manual with international recommendations, jointly with the Coordinadora Para la Prevención de la Tortura in order to aid both understanding and their implementation by Spanish authorities
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TORTURE CONTINUES TO EXIST IN SPANISH POLICE STATIONS AND PRISONS. THE COORDINADORA PARA LA PREVENCIÓN DE LA TORTURA WAS CREATED IN ORDER TO WORK TOWARDS AN END OF THIS SITUATION. Therefore, the Coordinadora para la Prevención de la Tortura began a campaign to get the Spanish Government to sign, ratify and implement the Optional Protocol Against Torture, passed by the UN General Assembly on 18 December 2002, which in our view establishes real and practical mechanisms for the prevention of torture, ill treatment and/or inhuman or degrading treatment in prisons, police stations, retention centres for immigrants etc. this must include participation by civil society, if it is to be truly effective. Therefore, the Coordinadorapara la Prevención de la Tortura organised a conference in February 21006 in Barcelona, where, based on the most important international recommendations, we defined the steps that should be taken in order to eradicate torture from the Spanish state. You will find these steps in this report, written with the cooperation of the OMCT.

The Coordinadora para la Prevención de la Tortura is made up of:
Acció dels Cristians per l'Abolició de la Tortura (ACAT). Alerta Solidària. Asociación APOYO. Asociación EXIL. Associació Catalana per la Defensa del Drets Humans. Associação Contra a Exclusão pelo Desenvolvimento. Asociación Contra la Tortura. Asociación para la Defensa de los Derechos de la Infancia. Asociación Libre de Abogados. Associació Memòria Contra la Tortura. Asociación Pro Derechos Humanos de Andalucía. Asociación de Solidaridad y Apoyo a los Presos de Aragón (ASAPA). Behatokia (Observatorio Vasco de Derechos Humanos. Centro de Asesoría y Estudios Sociales (CAES). Centro de Documentación Contra la Tortura. Comissió de Defensa del Col.legi d'Advocats Barcelona. Comité Anti-Sida de Lugo. Concepción Arenal, Comité de Solidaridad con Euskal Herria de Madrid. Coordinadora Antirrepressiva de Gràcia. Coordinadora Contra la Marginación de Cornellá. Coordinadora de Barrios de Madrid.
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Introduction

Spain has signed and ratified the UN International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights and the European Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and has also ratified the mechanisms of the European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and, more recently, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Therefore, Spain has taken on certain obligations and commitments before the international community, aimed at guaranteeing, promoting and protecting the rights of people under detention or in police custody. In addition, the State took on a commitment to produce reports on the follow-up and implementation of these obligations. The international community has created mechanisms stemming from the conventions ratified by each state –conventional mechanisms- and others which do not depend on an act of recognition by the State also enjoy a good reputation given the bodies they stem from –non-conventional mechanisms. These bodies have assessed the situation through a variety of instruments –visits, analysis of information provided by the authorities, obtained by the bodies themselves or received from NGOs...- and have issued recommendations. The aim of this paper is precisely to offer a compilation of the main recommendations, to publicise them and to aid their being taken into account and implemented.

- **CPT - Council of Europe Committee for the Prevention of Torture**

Spain ratified the European Convention on 2 may 1989. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) examines the treatment of detained people, to reinforce, if needed, their protection from torture and inhuman or degrading treatment or punishment.

Spain has received six visits by the Committee. The first took place between April 1st and 12th, 1991 and the last began on December 12, 2005. Publication of their reports is up to the state concerned. The reports on the two latest visits remain classed confidential.

- **Commissioner for Human Rights**

The post of Commissioner for Human Rights was created in 1999. The Commissioner is responsible for promoting education, awareness and respect for human rights in member states and ensuring full and effective compliance with Council of Europe texts. The Commissioner plays a supporting and essentially preventive role, without legal powers. The first holder of the post is Alvaro Gil-Robles (Spain) who was elected by the Parliamentary Assembly in September 1999.

- **The UN Committee on Human Rights**

The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

- **CAT – UN Committee against Torture**

Spain ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on November 20, 1987. It formulated the declaration contained in Article 22, according to which it recognised the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. In addition, the Committee against Torture is in charge of monitoring the fulfilment of the obligations taken on by States through the Convention against Torture through direct assessment. Following analysis of the situation by experts, they produce their conclusions and recommendations.

- **The UN Special Rapporteur on the Question of Torture**

Other well-regarded NGOs, such as Amnesty International, the World Organisation Against Torture, Human Rights Watch...have also expressed their concerns regarding this issue; however, we shall focus on institutional bodies -conventional or otherwise- for the monitoring of the question of torture and ill treatment.

Therefore, in the following pages, we have put together an extract from the main observations that the highest international organisations against torture have issued, without any comments or additions of our own and including the final recommendations in full. Whilst some of these bodies have produced reports on several occasions, we decided to include the latest and most up-to-date of the reports. We have also underlined parts and extracted the comments we believe are most interesting, with a view to facilitate reading.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

Report to the Spanish Government on the visit to Spain carried out from 22 to 26 July 2001

CPT/Inf (2003) 22

II. Facts found during the visit and action proposed

A. Evidence of ill-treatment of persons detained by the law enforcement agencies

As already indicated, the CPT delegation interviewed a number of persons detained in recent months on suspicion of terrorist-related offences. Certain of them alleged that they had been ill-treated while held in the custody of the National Police and the Civil Guard. Their allegations included blows to various parts of the body and, in some cases, more severe forms of ill-treatment. The latter included allegations of asphyxiation by placing a plastic bag over the head and, as regards the persons detained by the Civil Guard, electric shocks.

As in certain of its previous visits, the delegation gathered ample evidence, including of a medical nature, consistent with allegations of ill-treatment received by it. In particular, despite the time elapsed, in several cases, the delegation's doctors observed traces of injuries which were consistent with the allegations made by the persons in question. It is not, however, for the CPT to seek to establish beyond reasonable doubt whether or not ill-treatment has taken place in each case brought to its attention.

Having regard to the preventive nature of its mandate, the CPT wishes - in this report - to focus on whether the Spanish authorities have established effective safeguards against ill-treatment and accountability mechanisms for cases involving allegations of such treatment. Unless and until such safeguards and mechanisms are fully effective, there will remain a risk that law enforcement officials minded to ill-treat persons deprived of their liberty engage in such conduct.

It should be added that, after the July 2001 visit, the CPT has continued to receive allegations of ill-treatment by law enforcement officials, particularly concerning persons detained in connection with terrorist-related activities.

B. Implementation of the CPT recommendations on safeguards

1. Preliminary remarks

The CPT has repeatedly recommended that persons detained by the Spanish law enforcement agencies be granted **the right of access to a lawyer as from the outset of their detention, and that the period of time for which such persons may be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice be substantially shortened.**

At the end of the periodic visit in 1998, the Spanish authorities made known their intention to implement those two longstanding recommendations. However, in their subsequent response to the report on that visit, dated 11 July 2001, the Spanish authorities appeared to withdraw those undertakings, falling back on the assertion that current Spanish law fully guarantees the right to legal assistance and that legal provisions concerning notification of custody are in conformity with the Spanish Constitution and also with the jurisprudence of the European Court of Human Rights.

As regards access to a doctor, detained persons already have the right to be examined by a state-appointed forensic doctor and those who are not held *incommunicado*, in principle, also have the right to be examined by a doctor of their own choice. The CPT has recommended **that persons held *incommunicado* also be guaranteed the right to be examined by a doctor of their own choice**, it being understood that such a second examination may take place in the presence of a state-appointed doctor. In their response of 11 July 2001, the Spanish authorities made clear that they saw no need to implement this recommendation.

At the outset of the 2001 visit, the Spanish authorities reiterated that they consider that, on the whole, the legal provisions currently in force concerning the above-mentioned three fundamental safeguards provide adequate protection to detained persons against ill-treatment by law enforcement officials.

Consequently, during the 2001 visit, the delegation reviewed once again whether or not the existing legal framework is providing an effective set of safeguards against ill-treatment for persons deprived of their liberty by the law enforcement agencies, in the terms advocated by the CPT.

2. Access to a lawyer

In their above-mentioned response of 11 July 2001, the Spanish authorities asserted that **"the Government continues to be persuaded that the assistance of a lawyer is fully guaranteed in Spanish law and that, as has been confirmed by the Constitutional Court, the law complies with the Constitution"**.

During the talks held at the outset of the 2001 visit, senior officials (including the Technical General Secretary of the Ministry of the Interior) stated that the current position of the Spanish Government is that existing provisions on the right to legal assistance are adequate to ensure that, in practice, persons deprived of their liberty by the law enforcement agencies have a right of access to a lawyer as from the very outset of their custody.

Nevertheless, as had been the case during all of the CPT previous visits to Spain, the delegation found that the first moment at which detained persons actually have access to a lawyer is when they make a formal statement to the police. This means that **many detained persons can -and, as attested by the persons interviewed by the delegation in the course of the 2001 visit, often do- spend some considerable time in police custody before having access to a lawyer**. Further, the precise content of the right of access to a lawyer has not changed since the CPT first visit to Spain in 1991, and remains unsatisfactory.

The CPT can only conclude that, in practice, the existing provisions on the right to legal assistance fail to ensure that persons deprived of their liberty by the law enforcement agencies have, as from the very outset of their custody, the fully-fledged right of access to a lawyer which the Committee has recommended.

3. Notification of custody

Pursuant to the legal provisions which remain in force, certain categories of persons detained by the law enforcement agencies can be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice for up to five days.

In this connection, the CPT has always recognised that the denial for a brief period of the exercise of the right to notify someone of one's custody may exceptionally be necessary in order to protect the legitimate interests of the investigation. However, it has made equally clear that **to deny for up to five days the exercise of the right to have the mere fact of one's custody notified to a third party (i.e. to hold a person in secret for such a period insofar as his family and friends are concerned) is not justifiable** (cf. for example, paragraph 22 of the CPT 1998 report).

The delegation's findings during the 2001 visit indicate that, at least insofar as persons suspected of terrorist offences are concerned, it is still common practice for the exercise of this right to be delayed for periods up to the legal maximum of five days.

In their responses to the 1998 visit report, the Spanish authorities provide arguments in support of their contention that "on reasonable grounds, the exercise of rights by the detained person can exceptionally be delayed, on condition that they strictly respond to the requirements of the concrete situation." They also assert that this is in accordance with the jurisprudence of the Spanish Constitutional Court and the European Court of Human Rights. However, the Spanish authorities fail to address the essence of the position advanced by the CPT in this connection, namely that **a period of a maximum of 48 hours would strike a better balance between the requirements of investigations and the interests of detained persons.**

As far as the CPT is concerned, the current legal position remains unsatisfactory.

4. Access to a doctor

The CPT has taken due note of the explanation given by the Spanish authorities on the legal provisions currently in force concerning the right of access to a doctor. **In conformity with those provisions, persons held incommunicado are still not guaranteed the right of access to a doctor of their own choice** (cf. CPT/Inf (96) 9, Part II, paragraph 68); in most cases, access to a doctor remains limited to the examinations carried out by forensic doctors or doctors appointed by the court to perform forensic functions. Further, law enforcement officials are not yet required to inform detained persons who are not held incommunicado of their right to be examined by a doctor of their own choice, nor is such information provided in practice.

The CPT has never suggested that the right of access to a doctor of one's own choice should replace a medical examination by a forensic doctor or another doctor employed by the State. However, **a second medical examination by a doctor freely chosen by the detained person can provide an additional safeguard against ill-treatment.** As matters stand, the current legal provisions and practice concerning access to a doctor by detained persons fail to guarantee that safeguard.

Further, at the express request of the Spanish authorities, the CPT report on its 1998 visit **proposed specific improvements in the wording of the standardised form which should be used by forensic doctors to record the results of their medical examinations** (cf. CPT/Inf (2000) 5, paragraph 25).

However, by the time of the 2001 visit, **those improvements had not been incorporated into the form, and the delegation found that, in most cases, forensic doctors were not even using the current version of the standardised form.**

5. Assessment and action proposed

In the light of the information gathered during the visit, **the CPT can only disapprove of the stance adopted by the Spanish authorities in respect of the three fundamental safeguards** referred to in the preceding paragraphs, **particularly in view of the clear undertaking to take action upon the Committee's recommendations given three years ago.** The existing legal framework fails to provide an effective set of safeguards against ill-treatment for persons deprived of their liberty by the law enforcement agencies, in the terms advocated by the Committee.

The Committee wishes to recall that, regardless of the approach followed by judicial organs such as the Spanish Constitutional Court and the European Court of Human Rights, the Convention places Spain under a quite distinct obligation to cooperate with the CPT, including by taking steps to improve the situation as regards the protection of persons deprived of their liberty, in the light of the Committee's recommendations.

Having regard to the otherwise excellent cooperation received from the Spanish authorities, the CPT is reluctant to view this state of affairs as a failure to cooperate or refusal to improve the situation in the sense of Article 10, paragraph 2, of the Convention. Nevertheless, **the current impasse in its ongoing dialogue with the Spanish authorities on a subject as important as the safeguards against ill-treatment which are to be offered to persons deprived of their liberty by the law enforcement agencies cannot be allowed to continue.**

The Committee calls upon the Spanish authorities to take concrete action to implement - without further delay - the following longstanding CPT recommendations:

- **all persons deprived of their liberty to be granted, as from the very outset of their detention, a fully-fledged right of access to a lawyer of the kind described in paragraph 19 of the report on the CPT 1998 visit (cf. Appendix I to this report), it being understood that, in the case of persons held incommunicado, the lawyer may be appointed on their behalf;**
- **the period of time for which persons detained by the law enforcement agencies may be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice to be shortened to a maximum of 48 hours;**
- **persons held incommunicado to be guaranteed the right to be examined by a doctor of their own choice, it being understood that such a second examination may take place in the presence of a state-appointed forensic doctor;**
- **the form currently being used to inform detained persons of their rights to be amended in order to ensure that all detained persons (i.e. including those being held incommunicado) are expressly informed of their right to be examined by a doctor of their own choice.**

The CPT also recommends that its proposed amendments to the form used by doctors performing forensic functions (cf. CPT/Inf (2000) 5, paragraph 25) be adopted, and that effective steps be taken to ensure that the form is actually used by such doctors.

C. Examination of complaints of ill-treatment by law enforcement officials

1. Preliminary remarks

One of the most effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties. This will have a very strong deterrent effect. Conversely, if the relevant authorities do not take effective action upon complaints referred to them, those minded to ill-treat persons deprived of their liberty will quickly come to believe that they can act with impunity. In this connection, it is axiomatic that the examination of complaints must be conducted by a body which is, and is seen to be, independent and impartial.

Spanish law provides that every complaint which may involve the commission of a criminal - including a minor - offence by law enforcement officials must be examined by a court or judge. In consequence, most if not all complaints involving allegations of ill-treatment of detained persons ought to be handled by the judicial authorities.

Nevertheless, **allegations which ultimately lead to criminal charges may initially be investigated through internal accountability channels**, including by means of a preliminary confidential inquiry ("información reservada"). Further, once

the outcome of a criminal case is settled, internal accountability mechanisms may be called upon to re-examine the need for disciplinary action against law enforcement officials.

2. Judicial authorities

Detained persons can lodge a complaint about their treatment with the examining judge responsible for their case and are systematically offered the possibility to be examined by a state-employed doctor. The examining judge may take the necessary steps to preserve evidence and initiate proceedings to investigate the allegations or refer the matter to another competent judge. A complaint can also be lodged before the judicial authorities at a later stage.

Naturally, whenever a judge before whom allegations of ill-treatment are made does not personally investigate those allegations, the objective should be to ensure that the complaint reaches the competent court without delay and that the court in question promptly and thoroughly investigates any allegations of ill-treatment made by persons deprived of their liberty.

For many of the types of ill-treatment frequently alleged, it may be difficult to obtain medical evidence of their use. If carried out with a degree of proficiency, asphyxiation by the placing of a plastic bag over the head or the application of electric shocks will not necessarily leave physical marks. Nor will making someone stand for a prolonged period or perform physical exercises leave clearly identifiable traces of such treatment. Even blows to the body may leave only slight marks, difficult to observe and which quickly disappear.

Consequently, when allegations of such forms of ill-treatment come to their notice, **judges should not treat the absence of marks or conditions consistent with those allegations as in itself proving that they are false. In such cases, reaching a sound conclusion as to the veracity of the allegations will also require evaluating the credibility of the person making them; in other words, the persons concerned (as well as any other relevant persons) should be interviewed on this specific matter by the judge, and the opinion of a forensic doctor should be sought.**

Judges are empowered to verify the manner in which persons detained under their authority by the law enforcement agencies are treated. As regards persons held incommunicado, this supervisory function is clearly spelt out in Article 520 bis, paragraph 3, of the Code of Criminal Procedure. This provision is all the more important when allegations of ill-treatment of a detained person are brought to the attention of the competent judge. **The CPT invites the General Council of the Judiciary to encourage judges to adopt a more proactive approach in respect of the above-mentioned supervisory function.**

The CPT is also concerned to note that, despite previous comments made by the Committee (cf. CPT/Inf (1996) 9, Part II, paragraph 74), persons held incommunicado whose period of detention is extended beyond 72 hours up to a maximum of five days, are still not seen by a judge prior to the decision to extend the detention period (cf. Article 520 bis, paragraph 1, of the Code of Criminal Procedure). It would clearly be in

the interests of the prevention of ill-treatment for such persons to be seen by a judge prior to a decision being taken to extend their detention. Further, for a person apprehended by the law enforcement agencies to be held for up to five days before being brought before a judge may not be in conformity with other international legal provisions to which the Spanish authorities have subscribed.

The CPT recommends that persons held incommunicado be systematically brought before the competent judge - or, if the person is detained outside Madrid at the relevant time, before an examining judge of the district in which he is being held - prior to the taking of a decision on the issue of extending the detention period beyond 72 hours.

Public prosecutors also have a key role to play. In particular, it is the task of the prosecution service to instigate legal action in defence of the rights of citizens, both *motu proprio* and following a complaint or at the request of an interested party. It also lies with the prosecution service to ensure that other judicial authorities exercise their functions in conformity with the law. Further, in the context of criminal proceedings, prosecutors are required to call upon the judicial authorities to take the steps required to establish the facts of a case.

The CPT recommends that prosecutors be encouraged to make full use of their prerogatives when allegations of ill-treatment by law enforcement officials come to their attention.

It might be added that judges and courts are required to bring to the attention of the General Directorate of the Civil Guard decisions which end criminal proceedings initiated against a Civil Guard officer, i.e. whenever such an officer is sentenced, acquitted, or criminal proceedings are dropped. This provision should ensure that Civil Guard officers do not escape potential disciplinary liability. It would appear that, in practice, this communication also takes place at the outset of criminal proceedings, given that courts serve Civil Guard officers with summons to appear in criminal proceedings through official channels.

The CPT recommends that, in all cases, courts be required to notify the relevant law enforcement agency of all complaints lodged with them concerning the manner in which a detained person has been treated while in custody and of all subsequent decisions taken concerning those complaints.

3. Internal accountability mechanisms

As already indicated, allegations which ultimately lead to criminal charges may initially be investigated through internal accountability channels; this will also involve assessing whether or not the matter needs to be brought to the attention of the competent court. It also lies with the internal accountability mechanisms to review the need for disciplinary action against law enforcement officials in light of the outcome of criminal proceedings.

The CPT can only conclude that the potential contribution of National Police and Civil Guard internal accountability mechanisms to the prevention of ill-treatment of persons detained by those agencies is at best limited.

The Committee recommends that consideration be given to creating a fully independent investigating agency to process complaints against law enforcement officials; such a body should have the power to instigate disciplinary proceedings against law enforcement officials and to refer cases to the judicial authorities which are competent to consider whether criminal proceedings should be brought.

More generally, ensuring that police misconduct does not escape disciplinary measures may well require reviewing the standard of proof applied in the disciplinary context. **The CPT would like to receive the comments of the Spanish authorities in this respect.**

RECOMMENDATIONS

The Commissioner, in accordance with Article 3 b, c and e, and Article 8 of Committee of Ministers Resolution (99) 50 makes the following recommendations to the Spanish authorities:

Ill-treatment

Investigate rapidly and thoroughly all allegations of torture or ill-treatment, and deaths of detainees in police stations, premises of the Guardia Civil and other police authorities, applying where necessary the appropriate disciplinary and criminal sanctions. Establish appropriate procedures guaranteeing that allegations of ill treatment in a given detention centre, police station or Guardia Civil unit, will not be investigated exclusively or responded to directly by the officers allegedly involved but by specialist investigation services unconnected with the reported facts and under the supervision of a higher authority

Extend the prescription period for the crime of torture; consider removing the prescription of such offences altogether.

Remove from police stations and barracks any remaining instruments of defence prohibited by the regulations, which may cause dangerous physical harm.

Identify and eliminate the causes of the higher incidence of cases of ill-treatment by the police units of the local authorities and Autonomous Communities compared to national security forces. It may be useful, in this context, to introduce the control procedures similar to those used by the *Ertzaintza* more widely.

Create the necessary mechanisms for compensating victims of torture and ill-treatment, where necessary through legislative reforms.

Review the current regime of incommunicado detention so as to allow the detainee to meet his or her counsel in private, at least once.

The prison system

Revise, in the context of the reform of the Code of Criminal Procedure, the legal provisions on pre-trial detention, bringing them into line with the criteria set forth by the European Court of Human Rights.

Progressively reduce overcrowding in prisons by building new establishments, refurbishing those already in existence and extending the use of alternative sentences to imprisonment which would assist those convicted with their reintegration into society.

Carry out a thorough review of the provision of psychiatric care in the detention estate, equipping prisons with psychiatric care units able to treat detainees suffering from mental disorders and setting up a network of specialist establishments for the most serious cases, acting where appropriate in conjunction with the health authorities of the Autonomous Communities.

Revise and update the Suicide Prevention Programme.

Strengthen and expand drug rehabilitation and severance programmes, in particular the use of methadone treatment where medically advisable. Implement stricter measures to control drug trafficking in prisons.

Improve health care in prisons, particularly with regard to infectious and contagious diseases.

Take all necessary measures to ensure that detention facilities holding mothers and small children are specially adapted to the children's development.

Provide the necessary guarantees to ensure that the information contained in the files on prisoners requiring special observation ("FIES") is used exclusively by the authorised units, with due regard for the provisions of the Act on Personal Data Protection and without its application resulting in disciplinary measures not provided for in prison legislation and regulations.

Ensure access to this information by officials of the Spanish Data Protection Agency and the judges responsible for the supervision of prisons. Regulate the use of these files through their inclusion in the legislation covering the prison service.

In Catalonia, the necessary measures must be taken to reduce overcrowding in certain prisons and avoid a repetition of cases of ill-treatment such as those in *Quatre Camíns*. With regard to these serious incidents, it is essential to identify those responsible and, where appropriate, ascertain the criminal liability of officers involved in the physical attacks suffered by prisoners during their transfer as a result of the violent and aggressive behaviour directed towards officers and officials in the centre. Such conduct cannot be allowed to go unpunished.

The situation in young offender institutions

Take the necessary steps to prevent cases of abuse and ill-treatment in young offender institutions. Juvenile court judges and prosecutors should make regular visits to these centres and verify that the accommodation and treatment conditions are appropriate.

The Committee is concerned at the numerous reports it has received of ill-treatment and even torture inflicted on persons suspected of acts of terrorism by members of the security forces. It notes with concern, in that regard, that **investigations are not always systematically carried out by the public authorities and that when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released early, or simply do not serve the sentence.** Moreover, those who perpetrate such deeds are seldom suspended from their functions for any length of time.

The Committee is concerned that proofs obtained under duress are not systematically rejected by courts.

The Committee expresses concern at the **maintenance on a continuous basis of special legislation under which persons suspected of belonging to or collaborating with armed groups may be detained incommunicado for up to five days, may not have a lawyer of their own choosing and are judged by the *Audiencia Nacional* without possibility of appeal.** The Committee emphasizes that these provisions are not in conformity with articles 9 and 14 of the Covenant. Again in regard to those two articles of the Covenant, the Committee notes with concern that the duration of pre-trial detention can continue for several years and that the maximum duration of such detention is determined according to the applicable penalty.

With regard to the increase in the number of asylum-seekers, the Committee notes that anyone whose application for asylum or for refugee status is denied can be held for seven days prior to being expelled.

The Committee deplores the poor prison conditions that exist in most prisons, generally resulting from overcrowding, which deprives those detained of the rights guaranteed in article 10 of the Covenant.

Finally, the Committee is greatly concerned to hear that individuals cannot claim the status of conscientious objectors once they have entered the armed forces, since that does not seem to be consistent with the requirements of article 18 of the Covenant as pointed out in general comment No. 22 (48).

Suggestions and recommendations

The Committee invites the State party to take the necessary steps, including educational measures and information campaigns, to avert racist and xenophobic tendencies.

The Committee recommends that the State party establish transparent and equitable procedures for **conducting independent investigations into complaints of ill-treatment and torture involving the security forces, and urges it to bring to court and prosecute officials who are found to have committed such deeds**

and to punish them appropriately. The Committee suggests that comprehensive human rights training should be provided to law-enforcement officials and prison personnel.

The Committee recommends that the legislative provisions, which state that persons accused of acts of terrorism or suspected of collaborating with such persons may not choose their lawyer, should be rescinded. It urges the State party **to abandon the use of incommunicado detention and invites it to reduce the duration of pre-trial detention** and to stop using duration of the applicable penalty as a criterion for determining the maximum duration of pre-trial detention.

The State party is strongly urged to institute a right of appeal against decisions of the Audiencia Nacional in order to meet the requirements of article 14, paragraph 5, of the Covenant.

The Committee urges the State party to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces.

The Committee is aware of the difficult situation confronting the State party as a result of the serious and frequent acts of violence and terrorism which threaten the security of the State, resulting in loss of life and damage to property. The Committee recognizes the right and the duty of the State to protect its citizens from such acts and to put an end to violence, and observes that its lawful reaction must be compatible with **article 2 (2) of the Convention, whereby no exceptional circumstances whatsoever may be invoked as a justification of torture.**

Subjects of concern

The Committee observes with concern the dichotomy between the assertion of the State party that, isolated cases apart, torture and ill-treatment do not occur in Spain (CAT/C/55/Add.5, para. 10) and the information received from non-governmental sources which reveals continued instances of torture and ill-treatment by the State security and police forces.

Of particular concern are the **complaints concerning the treatment of immigrants, including sexual abuse and rape, allegedly on racist or xenophobic grounds.** The Committee notes that Spain has become an important gateway to Europe for immigrants, and that this has meant a significant increase in the country's foreign population. In this context the omission from the definition of torture in article 174 of the Penal Code of torture "based on discrimination of any kind," notwithstanding the fact that, under the Code, racism is deemed to be an aggravating factor in any offence, takes on particular importance.

The Committee continues to be deeply concerned by the fact that incommunicado detention up to a maximum of five days has been maintained for specific categories of particularly serious offences. During this period, the detainee has no access to a lawyer or to a doctor of his choice nor is he able to notify his family. Although the State party explains that incommunicado detention does not involve the complete isolation of the detainee, who has access to an officially appointed lawyer and a forensic physician, **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.**

The Committee also expresses its concern at the following:

(a) The substantial **delays attending legal investigations into complaints of torture**, which may lead to convicted persons being pardoned or not serving their sentences owing to the length of time since the offence was committed. This further delays the realization of the rights of victims to moral and material compensation;

(b) **The failure of the Administration, in some cases, to initiate disciplinary proceedings** when criminal proceedings are in progress, pending the outcome of the latter. Delays in judicial proceedings may be such that, once criminal proceedings have

concluded, disciplinary proceedings are time-barred;

(c) Cases of ill-treatment during enforced expulsion from the country, particularly in the case of **unaccompanied minors**;

(d) **The severe conditions of imprisonment of some of the prisoners whose names appear on the list of inmates under close observation (FIES).**

According to information received, prisoners under level one of the close observation regime have to remain in their cells for most of the day, and in some cases are allowed only two hours in the yard, are excluded from group, sports and work activities, and are subjected to extreme security measures. Generally speaking, it would seem that the physical conditions of imprisonment of these prisoners are at variance with prison methods aimed at their rehabilitation and could be considered prohibited treatment under article 16 of the Convention.

Recommendations

The Committee recommends that the State party should consider the possibility of improving the definition of torture in article 174 of the Penal Code in order to bring it fully into line with article 1 of the Convention.

The Committee recommends that the State party should continue to take measures to prevent racist or xenophobic incidents.

The Committee invites the State party to consider precautionary measures to be used in cases of incommunicado detention, such as:

(a) A **general practice of video recording of police interrogations** with a view to protecting both the detainee and the officials, who could be wrongly accused of torture or ill-treatment. The recordings must be made available to the judge under whose jurisdiction the detainee is placed. Failure to do this would prevent any other statement attributed to the detainee from being considered as evidence;

(b) **A joint examination by a forensic physician and a physician chosen by the detainee held incommunicado.**

The Committee reminds the State party of its obligation to carry out **prompt and impartial investigations** and to bring the alleged perpetrators of human rights violations, and of torture in particular, to justice.

The Committee recommends that the State party should ensure the initiation of disciplinary proceedings in cases of torture or ill-treatment, rather than await the outcome of criminal proceedings.

The Committee encourages the State party to take the necessary measures to ensure that the process of expulsion from the country, in particular in the case of minors, is in keeping with the Convention.

The Committee recommends that these conclusions and recommendations should be widely disseminated in the State party in all appropriate languages.

Item 11 (a) of the provisional agenda
Civil and Political rights, including the question of torture and detention
Report of the Special Rapporteur on the question of torture, Theo van Boven

Summary

At the invitation of the Government, the Special Rapporteur on the question of torture undertook a visit to Spain from 5 to 10 October 2003 within the framework of his mandate. The Special Rapporteur expresses his appreciation to the Government of Spain for having extended full cooperation to him during the mission. The report contains a study of the legal and factual aspects regarding allegations of torture or ill-treatment, in particular as regards detainees held in connection with counter-terrorism measures. **The Special Rapporteur concludes 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 detained incommunicado in connection with terrorist-related activities.** Accordingly, he recommends a number of measures to be adopted by the Government in order to comply with its commitment to prevent and suppress acts of torture and other forms of ill-treatment.

Conclusions

Spain is a country that has agreed to cooperate with all existing international and regional monitoring procedures and mechanisms for the protection of human rights, notably in the area of prevention and suppression of torture and cruel, inhuman or degrading treatment or punishment. Thus, Spain is a party to the International Covenant on Civil and Political Rights and the Optional Protocol thereto relating to communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. Spain has also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and has made the declaration under article 22 of the Convention which provides for the examination of communications from individuals claiming to be victims of a violation of the provisions of the Convention. Furthermore, Spain is among those Member States that have issued standing invitations to all thematic special procedures of the Commission on Human Rights, including the Special Rapporteur on the question of torture, to undertake missions to the country (the total number of countries having issued such standing invitations was 48 at the time of writing this report). The willingness of Spain to open itself to international procedures of scrutiny and accountability is highly commendable.

At the regional level, Spain is a party to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms and has thus accepted the jurisdiction of the European Court of Human Rights, which has the competence to take decisions on petitions relating to alleged violations of the Convention. Moreover, Spain is a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which provides for a system of visits by the Committee established under the Convention (CPT) so as to examine the treatment of persons deprived of their liberty.

The above-mentioned worldwide and regional instruments and mechanisms for adjudication, investigation, inspection, reporting and advice, whose pre-eminent aim, insofar as torture is concerned, is to suppress and to prevent this practice, are mutually reinforcing and complementary. The effectiveness of all these instruments and mechanisms depends largely on the degree of their impact on domestic practices and conditions. It is indeed important that public authorities and important sectors of civil society be aware of international human rights standards and procedures as a matter of public interest and public debate. Such public interest and public debate are not sufficiently developed in most, if not all, countries of the world.

Many countries face special conditions and serious difficulties of a socio-political and economic nature that adversely affect the enjoyment of human rights and fundamental freedoms. The present report, based on a one-week mission to Spain, is not the proper place or context to trace historical, cultural and geographical factors that have a bearing on the human rights situation in Spain. However, one particular factor that did come up repeatedly and emphatically in the context of the mission and that has major negative implications for human rights, particularly in terms of the rights to life and the security of the human person, are acts and threats of terrorism. Over the years ETA has carried out many acts of terrorism, including fatal bombings and shootings, which directly victimized many hundreds of people and spread fear for their lives and security among many more. The Special Rapporteur met with organizations and persons who live under the constant threat of becoming victims of terrorist attacks. The Special Rapporteur also met with the staff of an office that provides assistance to victims of terrorism. He fully associates himself with the unequivocal condemnation by the General Assembly of all acts, methods and practices of terrorism, in all their forms and manifestations, whenever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable.

At the same time, the Special Rapporteur has to stress, as do the many pronouncements to that effect by universal and regional human rights mechanisms, that **the lawfulness of counter-terrorism measures depends upon their conformity with international human rights law**. He noted with full approval that high Spanish political office-holders were unequivocal in their assertion that all measures to combat terrorism must remain within the confines of legality. In this connection, it must be recalled that, as the Special Rapporteur has outlined and underlined at many occasions and as repeatedly stated by all competent universal and regional human rights organs, **the right to freedom from torture and from cruel, inhuman or degrading treatment is absolute and non-derogable in all circumstances**. The Special Rapporteur notes in this regard that in those instances where human rights may be subject to limitations, and even derogations, a margin of appreciation may be granted to States, but that no such margin of appreciation, or discretion, is allowed where a non-derogable right is at stake, such as the prohibition of torture and cruel, inhuman or degrading treatment. In the same context, it should also be noted that the absolute and non-derogable prohibition applies not only to torture as such, but also to cruel, inhuman or degrading treatment or punishment. In submitting his findings and conclusions in connection with his visit to Spain, the Special Rapporteur also wishes to refer to the view of the European Court of Human Rights - expressed in relation to certain acts that had been classified in the past as "inhuman and degrading treatment" as distinct from "torture" - that the increasingly high standard being required in the area of the protection of human rights and fundamental

freedoms correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.

The Committee against Torture, in its conclusions and recommendations, adopted after examining the fourth periodic report of Spain on the implementation of the Convention in November 2002, observed with concern the **dichotomy between the assertion of the State party that, isolated cases apart, torture and ill-treatment did not occur in Spain and the information received from non-governmental sources which revealed repeated instances of torture and ill-treatment by the State security and police forces.** The Special Rapporteur during his visit to Spain similarly encountered these opposing views. According to the political authorities of the Spanish Government in Madrid, continuous and repeated allegations of torture and ill-treatment are false and fabricated, such allegations serving as a ploy to discredit the reputation of a country that is democratic and respects the rule of law. On the other hand, certain non-governmental groups and individuals claim that torture and ill-treatment by State security and police forces is systematically used. The Special Rapporteur believes that he should not only acknowledge that such divergent views exist, but that he also has the duty to draw further conclusions on the basis of his own findings. In this regard, he attaches great value to the opinion of credible interlocutors from the judiciary, the academic world and civil society that certain actors and militants supporting radical Basque causes may well use as a tactic the systematic practice of trumped-up allegations of torture and ill-treatment. At the same time, these interlocutors also conveyed their opinion to the Special Rapporteur that security and law enforcement agents, particularly in their counter-terrorist activities, do resort more than sporadically to practices that constitute torture or cruel, inhuman or degrading treatment. This opinion was shared by a considerable number of non-governmental organizations that the Special Rapporteur met and was confirmed by a series of testimonies presented to the Special Rapporteur by persons who had been arrested, detained and interrogated by the State security and police forces. These statements referred to treatment that included beatings, exhausting forced physical exercises, asphyxiation by placing plastic bags around the head ("*bolsa*") and humiliating sexual harassment. It is the considered view of the Special Rapporteur, in the light of the internal consistency of the information received and the precision of factual details, that these allegations of torture and ill-treatment cannot be considered to be fabrications. **The Special Rapporteur does not conclude that the treatment just described would constitute a regular practice but, in his view, their occurrence is more than sporadic and incidental.**

The Convention sets out a series of obligations to prevent and suppress practices of torture and ill-treatment. Great importance must be attached to the obligation to undertake a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed (art. 12) and to the duty to have allegations and complaints of torture promptly and impartially examined (art. 13). The Spanish legal system does provide for investigative mechanisms and procedures, but there are a number of reasons why this investigative capacity is underutilized and often ineffective. **The denial that the practice of torture or ill-treatment occurs, the deterrent, repeatedly reported to the Special Rapporteur, that allegations of torture are countered by criminal charges of defamation, and the questionable independence and impartiality of internal accountability mechanisms with regard to law enforcement officials are among the factors**

that contribute to the absence of an effective and prompt investigative practice and policy as regards the issue of torture and ill-treatment.

The Special Rapporteur fully shares the view repeatedly expressed by CPT that experience has shown that it is in the period immediately following deprivation of liberty that the risk of intimidation and physical ill-treatment is the greatest. It is crucial that in this period of police custody effective safeguards against torture and ill-treatment be ensured. These safeguards must weigh the more heavily when persons are held in incommunicado detention, as provided for in the Spanish Code of Criminal Procedure with respect to persons suspected of certain categories of crimes, including membership in or connection with an armed group, terrorists or rebels. **The issue of incommunicado detention is always of special concern to the Special Rapporteur** in view of the opinion repeatedly expressed by the Commission on Human Rights that prolonged incommunicado detention may facilitate the practice of torture and can in itself constitute a form of cruel, inhuman or degrading treatment, or even torture. **It is during this period that the detainee is deprived of basic guarantees, in particular access to a lawyer or to a doctor of his/her choice, and when he/she is not able to contact his/her family or friends.** It is true, as emphasized by the Spanish authorities, that in accordance with the Code of Criminal Procedure a detainee may be ordered held incommunicado only by a judicial authority and with proper substantiation; however, the Special Rapporteur has received ample information from a variety of sources that in this regard judicial control is more often of a formal and administrative nature than substantive and scrutinizing. The Special Rapporteur is also concerned that someone held incommunicado is not in a position to consult in private with a lawyer of his/her choice, or even with an assigned lawyer.

While one monitoring body - the Committee against Torture - has expressed serious concern about the incommunicado regime in the Spanish context and another monitoring body, the Human Rights Committee - has stated that provisions should be made against incommunicado detention, and while the Commission on Human Rights has repeatedly labelled prolonged incommunicado detention as a condition that facilitates the practice of torture, **recent legal developments in Spain appear to ignore international opinion in this respect and tend to go in the opposite direction.** In fact, the recent Organic Laws 13/2003 of 24 October 2003 and 5/2003 of 23 November 2003, amending the Spanish Criminal Code and Code of Criminal Procedure, serve in the Special Rapporteur's view as a consolidation of the incommunicado regime in cases relating, *inter alia*, to other crimes committed by common accord and in an organized manner by two or more individuals by allowing the five-day incommunicado period in police detention to be prolonged by another five days' incommunicado detention in *prisión provisional*.

Relations between central authorities in Madrid and Basque nationalist parties and movements are strained and reflect the tendencies and tensions of increased polarization. This also tends to have a bearing on the perception of victims belonging to opposing camps, i.e. victims of acts of violence and terrorism, and victims of torture and ill-treatment. Instead of emphasizing the differences between the two categories of victims, the Special Rapporteur would draw attention to the fact that from the human rights and humanitarian perspective, all the victims have had their basic rights to life, physical integrity and security placed in serious jeopardy and all are entitled to effective redress and reparation. From the same perspective, the Special Rapporteur cannot but fully agree with views expressed and statements made to him by staff of an office that takes care of victims of terrorism to the effect that both terrorism and

torture must be condemned wherever they occur, and that human rights and their guarantees, including basic guarantees for persons deprived of their liberty, are indivisible and must be applied without exception.

At the end of his visit to Spain the opinion of the Special Rapporteur that **there must be democratic and public space to raise and discuss fundamental human rights issues such as those falling within his mandate was strengthened. Denial and silence jeopardize the values inherent in human dignity and human security.** Vigilant and vocal human rights organizations and human rights defenders deserve, in Spain as everywhere else, praise and protection.

Recommendations

The highest authorities, in particular those responsible for national security and law enforcement, should officially and publicly reaffirm and declare that torture and cruel, inhuman or degrading treatment or punishment are prohibited under all circumstances and that information on and allegations of the practice of torture in all its forms will be promptly and thoroughly investigated.

Taking into account the recommendations of international monitoring mechanisms, **the Government should draw up a comprehensive plan to prevent and suppress torture and other forms of cruel, inhuman or degrading treatment or punishment.**

Since *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, **the *incommunicado* regime should be abrogated.**

All persons held in detention by law enforcement agencies should promptly and effectively be ensured (a) the right of access to a lawyer, including the right to consult the lawyer in private; (b) the right to be examined by a doctor of their own choice, it being understood that such examination may take place in the presence of a State-appointed forensic doctor; and (c) the right to have relatives informed of their arrest and place of detention.

Each interrogation should begin with the identification of all persons present. **All interrogation sessions should be recorded, preferably video-recorded, and the identity of all persons present should be included in the record.** In this regard, the practice of blindfolding and hooding should be explicitly forbidden.

Complaints and reports of torture or ill-treatment should be investigated promptly and effectively. Legal action should be taken against the public officials involved, and they should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. The investigation should be independent of suspected perpetrators and the agency they serve. Investigations should be carried out in accordance with the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 55/89.

Legal provisions should be effectively and expeditiously implemented to ensure that **victims of torture or ill-treatment obtain redress and adequate reparation,** including rehabilitation, compensation, satisfaction and guarantees of non-repetition.

In assigning prisoners from the Basque country to prisons, due consideration should be given to maintaining social relations between the prisoners and their families, in the best interests of the family and the prisoners' own social rehabilitation.

Given that, owing to time constraints the Special Rapporteur on the question of torture was unable to include comprehensively in his inquiries and findings alleged and reported practices of race-related ill-treatment of foreigners and Roma, the Government may wish **to consider inviting the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to visit the country.**

The Government is further invited to ratify, at an early date, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which not only provides for the establishment of an independent international mechanism, but also for independent national mechanisms for the prevention of torture at the domestic level. The Special Rapporteur deems such independent national control and inspection mechanisms to be an important additional tool and safeguard to prevent and suppress torture and ill-treatment with potentially beneficial effects for persons deprived of their liberty in all countries, including Spain.

**“LET US PREVENT TORTURE”
Barcelona, 3 and 4 February, 2006**

During February 3 and 4, 2006, the “Conference on Prevention of Torture, Implementation of the Optional Protocol Against Torture and the Recommendations of the UN Rapporteur” took place in Barcelona, with the active presence of Theo van Boven, former UN Rapporteur on the Question of Torture and of several experts from human rights organisations –Eric Sottas, Mark Thompson, Guilsella Perren, Susan Sutherland- members of prestigious international human rights organisations, real authorities on the issue of torture. The Conference, organised by the *Coordinadora para la Prevención de la Tortura* (Coordinating-group for the Prevention of Torture), which includes 37 organisations that are in direct contact with torture victims, that transmit their complaints and that, at the end of the day, have real and comprehensive information on the situation of torture and ill treatment in the Spanish State. The main aim of this conference was to have an input to the debate opened up around the signing, upcoming ratification and later implementation by the Spanish Government of the UN Optional Protocol. Thus, the contributions of the speakers and public were high quality and certainly helpful as to the steps the struggle against torture in the Spanish State should follow.

During the debates and discussions at the Conference, the persistence of torture in the Spanish State was made clear, both through the complaints and testimonials of people who suffered torture directly and through the report published by the *Coordinadora para la Prevención de la Tortura* (CPT) in May 2005, indicating that almost 800 people filed torture complaints in 2004, (many other cases were not denounced due to fear) and that between 2001 and 2004 227 members of the security forces were charged with crimes relating to the use of torture. Despite this report, and others, the authorities, whether state, autonomic or local, continue to deny this reality and to ignore recommendations issued by international and domestic organisations for the prevention of torture.

There was also comprehensive coverage of the impunity surrounding the use of torture in the Spanish State: from the persistence of incommunicado detention and isolation in prison, which are regimes that facilitate torture and afford it a systematic nature, continuing by the lack of real and independent investigation of torture complaints by judges and prosecutors, to the granting of pardons and grace measures to the few public officials who are, finally, convicted by the Courts.

Considering all the above, and in order to eradicate torture, we hereby issue the following

RECOMMENDATIONS

1st The highest authorities and institutions throughout the State must publicly and officially sign the absolute ban on any form of torture and/or inhuman or degrading treatment and will recognise the more than sporadic existence of this phenomenon in the Spanish State.

2nd There must be a rapid and efficient guarantee that any person held by the State Security forces will have the following rights: **a)** to access to a trusted lawyer before giving a statement. If a person chooses to receive counsel from a court-appointed lawyer, the activity of the latter must follow an action protocol and the lawyer must be experienced. **b)** to be examined by trusted doctors, plus a guarantee that forensic doctors who intervene in cases of torture and/or ill treatment work according to international protocols and standards –including the Istanbul Protocol- and prove they have special training to diagnose both physical and psychological torture and to evaluate the consequences, and **c)** to have their family and loved ones informed of their arrest and the place where they are held, as well as of their health state and legal situation.

3rd Incommunicado detention and the regime of penitentiary isolation create conditions that facilitate the use and impunity of torture and afford it a systematic nature. Therefore, these exceptional mechanisms shall be immediately abolished, together with the laws and courts that allow them and support them, such as the *Audiencia Nacional*, bringing on a reinstatement of the figure of the natural judge. In addition, all criminal proceedings sustained on incriminations or self-incriminations obtained from detainees under torture should be suspended and shelved.

4th In addition to the above, mechanisms for prevention of torture shall be put in place. Therefore, all arrests must begin with a proceeding to ascertain whether detainees wish to make use of their constitutional right to remain silent. If so, detainees shall immediately been taken before the judge; no from detainees, if made after this proceeding and before their appearance before the judge shall be valid. Interrogation shall include identification of those present and accreditation of their function in interrogation and/or legal proceedings. Interrogation, as well as the entire stay in police premises, should be recorded with audiovisual means under control and monitoring by bodies that are independent from the police forces and their direct political overseers. There should be an explicit ban on the use of hoods in police quarters and interrogation sessions.

5th No detainees or prisoners may be subjected to sensory deprivation of any kind and there must be an express ban on blindfolding, hooding or covering their ears. In addition, all non-regulation material which may be found in police quarters (both defensive and offensive) must be seized. There shall be a guarantee that none of the interrogation techniques forbidden by Article 16 of the Convention against Torture is used in the Spanish State.

6th The Government shall ratify the Optional protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and will guarantee the independent nature of the State Mechanism for Prevention and of the Local Prevention Mechanisms foreseen in the said Protocol. In order for this to be so, it will accept that the real implementation of this Protocol must be developed through

consensus with civil society, the organisations working in this field and international control mechanisms. Mechanisms designed as to implement the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment will be freely allowed to visit and inspect detention centres –as set out in the Protocol- to supervise the activity of forensic doctors and, especially, the fulfilment of international standards, to advise in the investigation of complaints, to inform and be informed by judges and to supervise the effective application of sanctions against offending officials.

7th The Government and other authorities will guarantee that every official in charge of custody is informed about the ban on torture, is adequately trained with regards to international protocols on human rights and has appropriate socio-cultural knowledge so as to respect the rights and liberties which assist detainees, at all times.

8th The independence, promptness and efficiency of investigations of torture and ill treatment complaints will be guaranteed, ensuring that international legislation and the resolutions by international organisations as to punishment of these offences are applied. Prompt and efficient investigation of any cases of death in custody must be equally guaranteed. The State Prosecutor shall automatically begin investigation into the events subject to complaint. The Government, through the General State Prosecutor, shall instruct state prosecutors to be proactive in repression of torture. With no detriment to the above, victims of torture shall always have access to free, specialised legal assistance.

9th Whenever there is a torture complaint, legal preventive and disciplinary measures shall be taken towards the accused officials, beginning by a cautionary suspension from office, pending investigation into the events. The investigation must be carried out independently from the alleged offenders and the security force to which they belong. Investigation should be carried out in conformity with the principles established by the UN General Assembly in Resolution 55/89.

10th Declaring torture imprescriptible in law and guaranteeing that no person who has committed torture is unpunished. Regarding this aspect and the issue of pardons to officials who have been convicted of torture, this measure of grace cannot be within the authority of the Government. The fact that people can be charged with libel, false complaints, perjury or even cooperation with an armed group for having filed a torture complaint can only be considered a reprisal aimed at creating a state of fear of reporting events of torture and thereby ensure impunity.

11th Regarding the decision of the place of incarceration of people deprived of their freedom, special attention should be given to the continuity of social and family relationships, as well as to the requirements of the process of social rehabilitation, as contained in Article 25.2 of the Spanish Constitution. The use of distancing and penitentiary dispersal as a systematic policy shall be forbidden as it completely contravenes this principle.

12th The specific needs of women should be taken into account, both in jails and police stations. Degrading and/or sexist treatment that may attack the sexual condition of any detainee or prisoner must be specifically forbidden. The right to sexual freedom and identity of detainees and prisoners must be guaranteed during police, judiciary or penitentiary custody, regardless of whether detainees are men, women or transsexual and regardless of their sexual orientation.

13th Cases of torture and/or ill treatment based on ethnic, religious, cultural or other discrimination must be observed with special care. In these cases, there must be a guarantee that the person reporting torture and/or ill treatment will not suffer reprisals. The fact that expulsion/return of immigrants to countries where torture exists is forbidden must be highlighted; the responsibility lies with the country carrying out the expulsion/return.

14th All the necessary measures to eradicate torture and /or ill treatment of minors must be urgently taken, whether in police stations, centres for minors or any other form of custody. Good conditions and appropriate treatment of minors must be guaranteed at all times and judges and prosecutors must be the guarantors of these conditions, with their physical presence at custody institutions. In particular, incommunicado detention and isolation of minors in custody must be forbidden.

15th The fundamental right to healthcare and the physical integrity of detained and imprisoned people. No person with a serious illness or whose condition may be deteriorated by custody in jail or in a police station shall be detained in such institutions. There shall be equally scrupulous respect for these rights in public administration psychiatric institutions. Hygiene, salubrity and dignity in places of custody or detention must be guaranteed.

16th Persons who have suffered torture or ill treatment must receive appropriate remediation and reparation, including acknowledgement of damage caused, rehabilitation, compensation, satisfaction of the needs stemming from their new personal situation and a guarantee of non-repetition.