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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

**Written statement* submitted by the International League for the Rights and Liberation of
Peoples (LIDLIP), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in
accordance with Economic and Social Council resolution 1996/31.

[1 July 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting
non-governmental organization(s).

Promotion and strengthening of democracy in the Basque Country

Historical background

Following the Civil War which tore apart Spain from 1936 to 1939, the Spanish State was governed until 1975 by an authoritarian political system until the death of General Francisco Franco Bahamonde. This period impacted strongly on the different political consciences of the citizens because police repression and political homogeneity were the rule in the whole country. In fact, Francoism - still present today in Galicia, for example in the person of a former minister of General Franco - was used to repress every political and cultural dissidence. Regional languages such as Basque, Catalan or Galician were prohibited in official usage. The aim of Franco's regime was to build the national unity of Spain, by eliminating all other identitarian specificities. It is during this phase of contemporary Spain that the Basque question appeared on the international scene through the violent actions of the organization *Euskadi Ta Askatasuna (ETA)*. This organization, whose objective was national and social liberation of the Basque Country, symbolized and channeled, at that time, the discontent of a population of the Basque Country and of the rest of Spain exasperated by a dictatorial political regime.

Political context

Today Spanish democracy is being reinforced after only 25 years since the advent of democracy in Spain and the popular acceptance of the Constitution and the regime of autonomies. During that period, ETA remained attached to its initial national and social ideas and faithful to the method of violence as a means of political pressure on the Government of Spain in order to manage to promote the cause of the Basque people. In fact, it is still active even if the young Spanish democracy allows different tendencies of regional nationalisms to express themselves in political institutions, within the framework of the statute of autonomies. Thus, the persistence of political violence in the XXIst century in a European state subject to the strict democratic obligations of the United Nations and the European Union is often incomprehensible outside the universe of Basque nationalism.

Basque nationalism is made up of several branches proposing a gradual variation of nationalism. The image of concentric circles allows a better understanding of the anchorage of these nationalist tendencies in the population of which ETA is supposed to be the core. Close to this radical independentist ideology - because legitimizing the utilization of violence - stands the political party *Batasuna*, then gradually two parties at present in the Basque government, *Eusko Alkartasuna (EA)*, and the Nationalist Basque Party (PNV). These three parties constitute the three institutional nationalist actors in the Basque Country, representing in total a slight majority of voters.¹ In the Basque Country, the Basque citizens feel more Basque than Spanish and are therefore more numerous than those feeling closer to the parties which defend the constitutional unity of Spain. This political and social division explains since some 50 years the persistence of the political-

¹ The latest available figures are those of the autonomous elections in Euskadi in 2005 in which these three parties realized in total 53.4 per cent, i.e. PNV-EA : 38.6 per cent; *Partido Comunista de las Tierras Vascas (PCTV)* : 12.5 per cent (during these elections, *Batasuna* being prohibited, asked its supporters to vote for the PCTV; *Aralar* : 2.3 per cent.

identitarian question of the Basque Country, a question the acuity of which is accentuated by the terrorist violence and police reactions.

Self-determination

The right of peoples to self-determination is enshrined in the Charter of the United Nations, in the International Covenants on civil and political rights and on economic, social and cultural rights and a number of resolutions of the General Assembly. More recently, in a document drafted under the mandate of the Sub-Commission (resolution 2000/116) dealing with the different international instruments for the promotion and consolidation of democracy, Mr. Manuel Rodríguez-Cuadros states that one of the constitutive concepts of democracy is self-determination of peoples: *“As the people has the power to set up any political system, the latter must ensure that the people’s sovereignty in this sense always lies in democratic expressions of its will”* (E/CN.4/Sub.2/2002/36, para. 19). The Spanish government does not follow this line of thinking, opposing the creation of consultation schemes allowing Basque citizens to decide on their political future. It is apparent that this topic is subject to numerous identitarian and political tensions. In fact, how can one avoid thinking of the multidimensional consequences of the acceptance of a nationalist project at the expense of an important minority of Basque citizens? Moreover by putting aside since a long time procedures allowing the Basque people to express itself on its political future, the Spanish government moves nearer to situations of other countries where anti-democratic political expedients and/or the force impede the holding of self-determination consultations.

The fight against terrorism

It must be noted that the Spanish anti-terrorist legislation lead to considerable restrictions of democratic rights. In fact, since 1998, the combat against the terrorism of ETA lead the Spanish justice to adopt penal procedures towards many organizations supporting the nationalist project in order to prohibit them. These exclusions of the public sphere concerning the media (*Egin, Egunkaria*) as well as political and cultural associations (*Ekin, Haika, Gestoras pro-amnistia, Segi, Udalbiltza*) reached their climax with the prohibition of the political party *Batasuna* in 2003 on the basis of articles of the law on political parties (Ley Orgánica 6/2002) adopted by the Spanish Parliament on 27 June 2002. Of course a state has the duty, even the obligation to combat a terrorist organization, but democracy is blemished when in the name of this legitimate struggle a political party which represents an important political sensibility of the Basque Country is prohibited. We are thus faced with a social phenomenon in which it is erroneous to believe that all the voters of Sinn Féin in Ireland or *Batasuna* in the Basque Country support terrorist violence. To prohibit a political party under these circumstances means to deprive political representations to a non negligible component of the Basque society on the one hand and shrivel and bog down even more a social and identitarian political situation. Let us recall in this context the report of Mr. Ambeyi Ligabo on the right of freedom of opinion and expression submitted to the Commission on Human rights of 2005 which states that *“the right to freedom of opinion and expression is a fundamental and inalienable right that contributes to the consolidation and the development of democracy, in addition to creating bridges between different peoples and civilizations”* (E/CN.4/2005/64, para. 49). Spain does not seem to have replied to the invitation of the Special Rapporteur since he took up his mandate on 26 August 2002, although he concludes in his report in 2005 that *“many Governments use anti-terrorism and national security legislation to restrict, partially or*

totally, freedom of opinion and expression and the right of access to information” (E/CN.4/2005/64, para. 61).²

Limitations to democracy

Measures prohibiting political organizations lead to a certain weakening of Spanish democracy because they penalize an ideology creating a strange mixture with the ETA movement and push thousand of persons into hiding. These prohibition measures are in fact contrary to article 25 of the International Covenant on civil and political rights.³ On the other hand, resolution 1999/57 of the Commission on Human Rights recognizes, *inter alia*, as specific rights to a mode of democratic government “*the right to political participation, including equal opportunity for all citizens to become candidates*”.

Moreover, these measures, adopted in the framework of the anti-terrorist legislation and prohibiting political organizations representing citizens appear as unproductive in relation to the aim sought by the government. Under these circumstances, the exclusion of political parties socially legitimate, beyond political inefficiency, might pervert the exercise of democracy, through restriction of rights and also through its consequences, authoritarian drifts.

Political dialogue

In the present political context, the *International League for the Rights and Liberation of Peoples (LIDLIP)* calls upon the Spanish government to install, together with the Basque government, a dialogue between all the parties implied in the Basque conflict. The models suggested by the pacifist association *Elkarri* on one side and in particular by the *Basic Democratic Agreement*, an initiative of the *Commission for the promotion of the conflict resolution*, could serve as examples. This Agreement, based on a 2003 citizen initiative, stipulates a series of principles for a possible negotiation. Some 40 political, labour and social organizations have adhered thereto, thus entrusting it with a true representativity.

Furthermore, the *International League for the Rights and Liberation of Peoples (LIDLIP)* urges the Sub-Commission to support the endeavour of the Special Rapporteur on freedom of opinion and expression in order to enable him to exercise fully his mandate in Spain.

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² Mr. Ligabo continues stressing that “*abuse of powers and prerogatives granted under such laws often leads to both prolonged and short-term arbitrary detention; torture; [...] the closure of various media enterprises; [...] bans on public gatherings; bans and prohibition on organizations and groups that are not associated with terrorism; censorship on forms of communication; and judicial lenience for the abuses and crimes committed by police, armed forces and paramilitary groups*” (loc. cit. par. 61).

³ Article 25 says in particular: “*The right of political participation, including equal opportunity for all citizens to become candidates; [...] a) to take part in the conduct of public affairs, directly or through freely chosen representatives; b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors*”.