



## 经济及社会理事会

Distr.  
GENERAL

E/CN.4/2004/56/Add.2  
6 February 2004  
CHINESE  
Original: ENGLISH

人权委员会  
第六十届会议  
临时议程项目 11 (a)

### 公民权利和政治权利，包括酷刑和拘留问题

#### 酷刑问题特别报告员奥多尔·范博芬的报告

#### 增 编

#### 对西班牙的访问 \* \*\*

\* 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要的附件，  
仅以提交语文和西班牙文分发。

\*\* 根据大会第 53/208B 号决议第 8 段规定说明如下：本文件迟交是为了列入最新  
资料。

### 内 容 提 要

应西班牙政府的邀请，酷刑问题特别报告员根据他的任务范围从 2003 年 10 月 5 日至 10 日对西班牙进行了访问。特别报告员感谢西班牙政府在他访问期间向他提供充分的合作。报告从法律和事实方面研究了酷刑或虐待的指称，特别是对由于反恐怖措施而被拘留的人施加酷刑或虐待的指称。特别报告员的结论是，在西班牙，酷刑或虐待不是蓄意性的，但是现行的制度会发生酷刑或虐待，特别是对由于涉及恐怖主义的活动而被单独拘留的人施加酷刑或虐待。因此，他建议政府采取若干措施，以兑现它关于防止和制止酷刑和其他形式的虐待的承诺。

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON THE QUESTION  
OF TORTURE, THEO VAN BOVEN, ON HIS VISIT TO SPAIN  
(5-10 OCTOBER 2003)**

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 8	4
I. LEGAL FRAMEWORK AND SAFEGUARDS FOR THE PROTECTION OF DETAINEES FROM TORTURE .....	9 - 22	6
II. SCOPE AND CONTEXT: ACTORS AND FACTORS .....	23 - 50	9
A. Terrorism and its effects .....	23 - 33	9
B. Incommunicado detention .....	34 - 43	11
C. Investigations, prosecutions and reparations .....	44 - 50	14
III. OTHER ISSUES .....	51 - 52	16
A. Dispersal of prisoners .....	51	16
B. Race-related torture .....	52	16
IV. CONCLUSIONS .....	53 - 63	17
V. RECOMMENDATIONS .....	64 - 73	21

## **Introduction**

1. At the invitation of the Government of Spain, the Special Rapporteur on the question of torture undertook a mission to the country within the framework of his mandate. Over the past few years, the Special Rapporteur had advised the Government that he continued to receive information in relation to his mandate from Spain.<sup>1</sup> The objective of the visit, which took place from 5 to 10 October 2003, was to enable the Special Rapporteur to collect first-hand information from a wide range of contacts in order to better assess the situation in Spain relating to his mandate. This would enable the Special Rapporteur to recommend to the Government a number of measures to be adopted in order to comply with its commitment to prevent and suppress acts of torture and other forms of ill-treatment.

2. In view of the planned duration of the mission (five working days) and as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>2</sup> had recently visited Spain from 22 July to 1 August 2003, and in light of the envisaged draft amendments to the Code of Criminal Procedure (CCP) which were pending at the time of the Special Rapporteur's visit to Spain, the Special Rapporteur did not visit places of detention but decided to focus on legal safeguards. Furthermore, the Special Rapporteur on the human rights of migrants undertook a mission to Spain in September 2003, just prior to the visit by the Special Rapporteur on the question of torture to the country. In this context, the Special Rapporteur on the question of torture decided not to duplicate efforts and, although he received information about race-related acts of torture and ill-treatment, and in particular allegations to that effect regarding migrants and Roma, it was not the focus of his visit. Instead, the Special Rapporteur focused mainly on the legal and factual aspects in connection with allegations of torture or ill-treatment relating to detainees held on terrorism charges.

3. The Special Rapporteur is aware of the serious difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances international law prohibits in absolute terms torture and inhuman or degrading treatment or punishment. The mission to Spain to study the various safeguards for the protection of detainees in the context of counter-terrorism measures can also be considered as an effort to identify possible approaches for other countries grappling with similar issues, in particular how to fight terrorism whilst respecting human rights.

4. The issues examined by the Special Rapporteur can be summarized as follows:

(a) Legal framework and safeguards for the protection of detainees from torture or ill-treatment, in particular with regard to detainees held in connection with counter-terrorism measures;

(b) Review of the occurrence and extent of the practice of torture or ill-treatment;

(c) Investigation and punishment of acts of torture, and the right to fair and adequate compensation and rehabilitation for victims of torture.

5. During his mission the Special Rapporteur visited the cities of Madrid, Vitoria and Bilbao. In Madrid, he held meetings with, among others, the following personalities and authorities: the Secretary of State for Foreign Affairs, Ramón Gil-Casares; the Minister of the Interior, Angel Acebes; the Attorney-General, Jesús Cardenal; the Secretary of State for Justice, Rafaël Catalá; the Director-General for the Modernization of Justice, Alberto Dorrego; the Director-General of Legislative Policy, Félix Fernandez-Shaw; the Secretary of State for Security, Ignacio Astarloa; the Director-General of the Civil Guard, Santiago López Valdivieso; the Deputy Director-General for Operations of the Civil Guard, General Faustino Vicente Pellicer; the President of the Criminal Law Chamber of the Supreme Court, Luís Román Puerta; the President of the Audiencia Nacional, Carlos Divar; members of the General Council of the Judiciary; the Director-General for Affairs relating to the United Nations Security Council, Agustín Núñez; the Director of the Human Rights Office, Juan Manuel Cabrera; the Deputy Director for Operations at Police Headquarters, Pedro Díaz Pintado; the Spanish Ombudsman, Enrique Múgica Herzog; the Director-General of Prisons, Angel Yuste; the First and Second Deputy Chairpersons of the Parliamentary Commission on Justice and the Interior, Francisco Subirón (People's Party) and Carmen del Campo (Spanish Socialist Workers' Party); and member of parliament Gustavo de Aristegui.

6. In Vitoria, Basque Autonomous Region (*Comunidad Autónoma del País Vasco*), the Special Rapporteur held meetings with the following personalities: the Ombudswoman of the Basque Country (*Defensora Del Pueblo*, "Ararteko"), Mercedes Agundez; the Government's delegate in the Basque Autonomous Region, Enrique Villar Montero; the Head of the Police in the Basque Autonomous Region, Enrique Barón; the *Procurador en las Juntas Generales de Alava*, Alfredo Marco Tabar; and members of the Basque Parliamentary Committee on Human Rights. In Bilbao, he held meetings with the following personalities: the Minister of the Interior of the Basque Government, Javier Balza; the Minister of Justice of the Basque Government, Joseba Azcárraga; the Deputy Counsellor for Citizen Security, Mikel Legarda; and the Director of Human Rights of the Basque Government, José María Urquijo Azcárate.

7. The Special Rapporteur also met persons who themselves or whose relatives had allegedly been victims of torture or other forms of ill-treatment and received verbal and written information from non-governmental organizations (NGOs), including the following: Amnesty International Spain, Asociación Pro Derechos Humanos (APDH), Basta Ya, Comisión Española de Ayuda al Refugiado, Etxerat, Federación de Asociaciones de SOS-Racismo, International Federation of ACAT (Action of Christians for the Abolition of Torture), Oficina de Atención a Víctimas del Terrorismo, Fundación por la Libertad, Elkarri, Gesto por la Paz, Torturaren Aurkako Taldea and Salhaketa. Finally, he also met with members of the legal profession and the academic world.

8. The Special Rapporteur wishes to thank the Government of Spain for having invited him and for extending full cooperation during the mission. He also expresses his gratitude to the United Nations Information Centre for organizing the press conference at the end of his visit.

## **I. LEGAL FRAMEWORK AND SAFEGUARDS FOR THE PROTECTION OF DETAINEES FROM TORTURE**

### **International and regional level**

9. Spain is a party to six of the seven major United Nations human rights treaties and their protocols. In particular, in the field of preventing, combating and eradicating torture, Spain is a party to the International Covenant on Civil and Political Rights and its first Optional Protocol, and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Spain has made a declaration under article 22 of CAT, recognizing the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals claiming to be victims of a violation of one or more provisions of the Convention.

10. At the regional level, Spain is party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which Spain ratified in 1989. The Convention establishes a Committee mandated to undertake on-site visits to any place of detention or deprivation of liberty by a public authority. The Committee for the Prevention of Torture (CPT) has visited Spain on a number of occasions and most recently in 2003.

### **National level**

11. At the national level, article 10, paragraph 2, of the Spanish Constitution of 1978 stipulates that “[P]rovisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain”. Article 15 prohibits torture and other inhuman or degrading treatment. As stipulated in article 96 of the Constitution, international treaties that have been ratified by Spain form part of the Spanish legal order once they have been officially published. These treaties include human rights instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the (European) Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Article 54 of the Constitution created the Office of the Ombudsman.

### **Prohibition of torture**

12. The definition of torture in article 174 of SPC<sup>3</sup> contains similar wording to that of article 1 of the Convention. The Special Rapporteur welcomes the recent amendment of this provision,<sup>4</sup> which completes the existing definition of torture with a reference to reasons “based on discrimination of any kind”, in accordance with the Convention. Article 174 of SPC as well as Organic Law 15/2003 omit “intimidation” as one of the purposes for which torture is inflicted and do not foresee that torture “may be at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. However, the Special Rapporteur understands that article 174 must be read in conjunction with article 28 of the Criminal Code, which expressly punishes instigation of crimes. The prohibition of degrading treatment is enshrined in article 173 of SPC.

### **Safeguards during arrest and detention**

13. The Spanish Constitution of 1978 guarantees the personal liberty of individuals, specifies the maximum duration of preventive detention and lays the safeguards during arrest and detention.<sup>5</sup>

14. The constitutional safeguards and other guarantees in relation to arrest and detention are set out in article 520 of the Code of Criminal Procedure (CCP).<sup>6</sup> In particular, article 520 (2) provides that any person arrested must be informed immediately, and in a manner understandable to him, of his rights and of the grounds for his arrest. Article 520 (2) (c) provides for the right to choose a lawyer and to request his/her presence with a view to attending the interrogatory proceedings and acting in the verification of identity; article 537 of SPC makes it an offence for a public authority to obstruct a detainee's exercise of the right to counsel. Article 520 (2) (f) provides the right to be examined by a forensic doctor or his/her legal substitute, or by the doctor of the institution where the detainee is in custody, or by any other doctor dependent on the State or another public administration; the right to be visited by a doctor of the detainee's own choice is enshrined in article 523 of CCP. Article 520 (2) (d) provides for the right to have relatives informed about the arrest and the place of detention. Article 3 of Organic Law 6/1984 establishes that habeas corpus procedures can be initiated by the detainee, his/her family, the public prosecutor, the Ombudsman and the competent judge who can request the examining magistrate to consider the legality of a detention. The supervision of the situation of detained persons by the competent judicial authority is regulated by article 526 of CCP.

15. The legal safeguards and guarantees afforded during arrest and detention change in cases of specific offences. Article 55 (2) of the Constitution states: "An organic law may determine the manner and the circumstances in which, on an individual basis and with the necessary participation of the courts and proper parliamentary control, the rights recognized in articles 17 (2) [on length of detention], 18 (2) [on home inviolability] and 18 (3) [on secrecy of communications] may be suspended as regards specific persons in connection with investigations of the activities of armed bands or terrorist groups. The unwarranted or abusive utilization of the powers recognized in said organic law will result in criminal responsibility as a violation of the rights and liberties recognized by the laws."

### **Incommunicado detention**

16. In the light of the above-mentioned constitutional provision (art. 55 (2)), the Spanish legislation provides for the possibility of holding incommunicado individuals detained on suspicion of certain categories of crimes, including membership in or relation with an armed group, terrorists or rebels, and of restricting the exercise of some of their rights. Incommunicado detention, which may be ordered both in police detention<sup>7</sup> and in *prisión provisional*, must in any case be authorized and supervised by a judicial authority.

17. According to article 17 (2) of the Constitution and article 520 (1) of CCP,<sup>8</sup> police detention shall not last more than the time strictly required in order to carry out the necessary investigations aimed at establishing the facts and must under no circumstance be longer than 72 hours. However, in accordance with the above-mentioned article 55 (2) of the Constitution and article 520 bis (1) of CCP, the police detention period may be prolonged for up to 48 hours in cases related to the prosecution of crimes listed in article 384 bis of CCP, namely membership

in or relation with an armed group, terrorists or rebels. This extension shall in all cases be requested within the initial 48 hours of police detention and be authorized by a competent judge within the following 24 hours. Therefore, individuals suspected of these crimes may be held in police custody for up to five days. Article 520 bis (2) of CCP further provides that a judge may authorize that the police detention of these individuals be incommunicado.

18. In accordance with the law, following the police detention, once the criminal procedures are initiated and before the competent court issues a verdict, the judge may order that a detainee be placed in *prisión provisional*. This procedure is regulated by CCP as recently amended by Organic Law 15/2003 of 25 November 2003. According to its new article 509, upon judicial authorization, individuals detained on suspicion of the crimes listed in article 384 bis of CCP as well as those detained in relation to other crimes committed by common accord with and in an organized manner by two or more individuals may be held in incommunicado detention for up to another five days in *prisión provisional*. It is the Special Rapporteur's understanding that this category of detainees may therefore be kept incommunicado for up to 10 consecutive days (5 in police custody and 5 in *prisión provisional*). In addition, under new article 509 of CCP, the competent judicial authority may order another incommunicado detention, which cannot be longer than three days.

19. The Special Rapporteur notes that new article 509 includes in the category of individuals who may be subjected to incommunicado detention in *prisión provisional* individuals detained in relation to "other crimes committed by common accord and in an organized manner by two or more individuals".

20. Pursuant to article 527 of CCP, individuals in incommunicado detention are barred from enjoying the following rights: access to facilities or activities consistent with the nature of their detention; visits from a religious minister, a doctor, relatives or advisers; correspondence and communication; freedom from exceptional security measures; access to a lawyer of their own choice; notification of the fact of their detention and the place in which they are being held to their relatives; and private consultation with their lawyers upon completion of the procedures in which the lawyers have intervened.

21. It appears from article 510 of CCP as amended by Organic Laws 13/2003 and 15/2003, that incommunicado detainees in *prisión provisional* would be placed in a less strict isolation regime than when in police detention. In addition, as mentioned below, the recent amendment of CCP through Organic Law 15/2003 states that, if they so request, incommunicado detainees may be examined by a second forensic doctor.

### **Protocol for the coordination of assistance to individuals held in incommunicado detention (2003)<sup>9</sup>**

22. In 2003 the Department of the Interior of the Basque Government, in consultation with the Department of Justice, Labour and Social Security and the Department of Health of the Basque Government, adopted a number of additional safeguards, known as the Protocol, to be applied by the *Ertzaintza* (Autonomous Basque) police in regard to individuals in incommunicado detention. It deals with the coordination of activities of the Basque police, the Basque health service and the Basque forensic institute for detainees. Additional safeguards include tighter medical checks of the condition of detainees, including the introduction of



blood/urine tests if the detainee requests them. The Protocol also includes services to be provided to the families of persons in incommunicado detention. It established a hotline which functions 24 hours a day to provide information to close relatives of the detainee. The information provided includes the reason for and place of arrest, the health condition of the detainee and a list of personal articles that can be given to the detainee. The family are also informed when incommunicado detention is completed and the person has been brought before the judicial authorities.

## II. SCOPE AND CONTEXT: ACTORS AND FACTORS

### A. Terrorism and its effects

23. As mentioned in the introduction to this report, during the mission the Special Rapporteur focused his inquiry on the treatment of individuals held in police detention, and in particular on the treatment and regime applicable to suspected members or collaborators of terrorist groups.

24. In this respect, the Special Rapporteur wishes to underline that he is fully aware of the acts of violence and terrorism confronting Spain. The crimes committed by *Euskadi Ta Askatasuna* (ETA) flout the principles of international and national human rights law and the dictates of public conscience. ETA has been criminally involved in shootings, bombings and campaigns of intimidation, which has had an enormous impact on the daily lives of people. Many in Spain live in constant fear: politicians, judges, lawyers, members of law enforcement forces, academics and journalists have received death threats against themselves and their families. According to the information received, since 1984 ETA has killed 831 individuals, injured 2,392 and abducted 77.

25. The Ministry of the Interior emphasized that terrorism was a grave security threat. The Government told the Special Rapporteur that it was fighting terrorism on three main fronts: the rule of law, international cooperation, and the stability pact for liberty and against terrorism (*Acuerdo por las libertades y contra el terrorismo*), an agreement concluded on 8 December 2000 between the People's Party and the Spanish Socialist Workers' Party.

26. The Special Rapporteur recognizes that Spain has a right, and indeed an obligation, to protect its citizens and the security of the State against such acts and threats thereof. However, he wishes to reiterate, as he has done most recently in his report to the General Assembly (A/57/173), that the legal and moral basis for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute and imperative and must under no circumstances yield or be subordinate to other interests, policies or practices, including the legitimate need to prevent terrorist acts and bring those responsible for having financed, planned, supported or committed these acts, to justice. It follows that legislation must provide sufficient legal safeguards to prevent, prohibit and combat torture and other forms of ill-treatment and ensure that impunity will not prevail in cases of torture under any circumstances, and that such normative safeguards must be duly implemented and applied.

27. Before and during his visit to the country, the Special Rapporteur received a great deal of information from non-governmental sources, including personal testimonies from former detainees, to the effect that torture and cruel, inhuman and degrading treatment continues to occur in Spain. The majority of the information received, in line with the focus of the visit, was

concerned with detainees arrested and held incommunicado as suspected members or supporters of ETA. According to testimonies provided to the Special Rapporteur during the mission, a certain pattern had emerged. Suspects were arrested and transferred to Madrid. During transfer they were allegedly handcuffed, hooded, forced to keep their head between their knees and beaten. They were reportedly held incommunicado by the police or the Civil Guard for three to five days, when they were reportedly subjected to torture or cruel, inhuman or degrading treatment. Former detainees described the following methods of treatment during incommunicado detention: hooding, forced nudity, physical exercise, being forced to stand for prolonged periods facing the wall, sleep deprivation, disorientation, the “*bolsa*” (asphyxiation with a plastic bag), sexual humiliation, threatened rape, and threats of execution.

28. During the visit the Special Rapporteur provided the Government with a selection of alleged recent cases that reportedly occurred between March 2002 and February 2003. The Government responded by letter dated 17 November 2003; a summary of the Government’s response can be found in document E/CN.4/2003/56/Add.1.

29. The Special Rapporteur has observed a reluctance to discuss the occurrence and extent of the practice of torture in Spain as torture has become a highly politically charged issue. The prevailing opinion among authorities interviewed by the Special Rapporteur was that reports of torture by persons detained in connection with counter-terrorism measures were false and made systematically as part of the ETA strategy to undermine the Spanish criminal justice system. The Government provided the Special Rapporteur with a document reportedly found in the residence of members of the “ARABA/98” terrorist squad arrested on 19 March 1998. The document is said to provide instructions on how to claim that one was tortured when in detention. The decree of silence that surrounds the subject and the denial by authorities without investigating the allegations of torture has made it particularly difficult to provide the necessary monitoring of protection and guarantees.

30. During the mission the Special Rapporteur learned that some persons or NGOs that had filed complaints of torture were subsequently accused of supporting ETA and terrorism. The following case involving a Basque newspaper provides an illustration of the tensions between counter-terrorism measures and the duty to prevent, prohibit and combat torture.

31. On 20 February 2003 a judge of the *Audiencia Nacional* (or National High Court) ordered the newspaper *Euskaldunon Egunkaria* closed and the arrest of 10 persons associated with it. All were reportedly held incommunicado under the anti-terrorist legislation and taken to the *Audiencia Nacional* in Madrid. The judge justified the closure and arrests in a decision in which he stated that the company that published the newspaper was financed and directed by ETA. Founded in 1990, the newspaper allegedly contributed to a Basque-language information structure which facilitated the dissemination of “terrorist” ideology. After being released from detention in connection with the closure of *Egunkaria*, Martxelo Otamendi Eiguren, one of the directors, claimed that he and others had been subjected to torture while being held incommunicado. In March 2003 the Government lodged a complaint with the *Audiencia Nacional*, in which it accused Martxelo Otamendi Eiguren and three other newspaper directors of “collaborating with an armed band” by making torture claims as part of an ETA-inspired strategy to undermine democratic institutions.

32. In response to a question about the freedom of the press to discuss the question of torture, the Minister of the Interior told the Special Rapporteur that if there was a credible complaint of torture it would be discussed publicly; however, in counter-terrorism cases it was standard practice for a person who has been detained systematically to allege that he/she has been tortured. Consequently, most press agencies did not report the case as they knew the claim to be false, except for those newspapers linked to terrorism. He stressed that ETA acted not only through gunmen and bombers, but also had members in political parties, in the media and in NGOs. Certain organizations and parties had been declared illegal on the basis of their connections with ETA by a judicial decision, not by an act of the executive branch. He stated that some had used the privileges of democracy to extend their power base. In regard to the *Egunkaria* case, the Minister had ordered the newspaper closed because of its links to ETA and the persons connected with it arrested. He said that the journalists had been instructed by ETA to claim that they were tortured and that the allegation was false. Judicial proceedings had nevertheless been initiated. At the time of the visit no judicial decision had been taken as to the substance of this matter.

33. Non-governmental sources informed the Special Rapporteur that some lawyers assisting terrorist suspects might make allegations of torture, using the criminal system for political purposes, but emphasized that the occurrence of some false or inflated allegations did not mean that torture did not take place; each case required investigation to verify the facts. According to these sources, torture is an issue which people are uncomfortable with and it has been used for political purposes; however, it is vital that it be addressed not only in the context of counter-terrorism measures, but also in the context of racial or ethnic abuse.

## **B. Incommunicado detention**

34. As stated in section I, CCP allows for incommunicado detention for individuals suspected of having committed particularly serious offences, namely membership in or connection with an armed group or terrorists or rebels, as prescribed by article 384 bis of CCP, and in the case of other crimes committed by common accord and in an organized manner by two or more individuals. In this context, the Special Rapporteur, in line with views expressed by regional human rights courts and bodies, and resolutions adopted by the Commission on Human Rights, recalls that prolonged incommunicado detention may facilitate the perpetration of torture and could in itself amount to a form of cruel, inhuman or degrading treatment.<sup>10</sup> Therefore, existence and implementation of adequate legal safeguards, such as prompt judicial intervention, access to legal counsel and medical examination, the right to challenge the lawfulness of detention, and the right of relatives to be informed about the arrest and place of detention of a detainee, serve as fundamental guarantees that there will be no breach of the non-derogable right not to be subjected to torture or other forms of ill-treatment.

35. A number of interlocutors raised concerns that under the envisaged amendment to CCP (later enacted by Organic Laws 13/2003 and 15/2003), a person could be held in incommunicado detention for a total of 10 consecutive days, possibly extended to 13 days (see paragraphs 16-18 above). The Special Rapporteur met with the Secretary of State for Justice and requested further information on how the new law would alter the legal regime vis-à-vis incommunicado detention.

36. According to information received during this meeting, under the normative framework in force prior to the adoption of the Organic Law 13/2003, a judge could decide that the period of

pre-trial detention would be *incommunicado* for a length of time that was not clearly defined and, thus, pre-trial *incommunicado* detention could be for an undetermined period of time. The authorities argued that the new regime would bring Spanish legislation more into conformity with international human rights standards vis-à-vis *incommunicado* detention by placing strict and well-defined time limits on the length of time an individual could be held *incommunicado* in pre-trial detention. It was underlined that prolonging the *incommunicado* detention in prison for a five-day period following a five-day period of *incommunicado* in police custody would have to be justified by compelling evidence, the judge would have to take a decision by written order, this order would have to be notified to the prosecutor as well as to the defence, and the decision could be appealed to a superior court. The Special Rapporteur was also informed that in cases of *incommunicado* detention, the detainee would retain all constitutional rights except in two respects: the lawyer would not be of his/her own choice but assigned, and the detainee would not have the right to a doctor of his/her choice. However, in the then pending bill, which became Organic Law 15/2003, a detainee held *incommunicado* in *prisión provisional* would have the right to be examined by a second forensic doctor. It was underlined that, despite the previous legal regime allowing for undetermined periods of pre-trial detention in prison, those legal provisions were very rarely used and thus, they argued, there were no reasons to believe that the revised regime would be used routinely or proactively. Finally, it was stressed repeatedly that the maximum period a person could be held in *incommunicado* detention was 10 consecutive days (5 in police custody and 5 in prison in pre-trial detention).

37. When asked about guarantees for detainees held in *incommunicado* detention, the President of the *Audiencia Nacional* explained that an investigating judge was informed as soon as a person was detained. If the person was detained in another region, the judge might delegate supervision to a local judge or, in some cases, judges would travel to the region to supervise the case. He explained that *incommunicado* detention was not intended to deprive a detainee of his/her rights, but to prevent any information from leaking out. He emphasized that there were more guarantees for persons detained under terrorist charges in *incommunicado* detention than in other parts of the system. He said that the system provided the legal framework for the prompt investigation of torture. Forensic doctors regularly visited the detainees and reported any injuries to the investigating judge. He agreed that audio-visual recording would be useful to monitor the treatment of detainees and could be useful in refuting false allegations of torture. The Special Rapporteur was informed that there was a strict regime applied to judges who failed to fulfil their duties.

38. According to the authorities, requests to extend *incommunicado* detention must be substantiated by the competent judge. However, according to non-governmental sources, such substantiation is usually based simply on a reference to an individual's suspected links with terrorism - traditionally with ETA. There is reportedly no further presentation of evidence and the request is usually granted automatically. Judges may at all times request information on and ascertain the detainee's situation personally or by delegating this responsibility to the investigating judge of the district in which the detainee is being held. However, this is left to the judge's discretion, and according to information received, in practice judges rarely exercise their right to obtain information personally. In this context, the Special Rapporteur shares the concerns expressed by CPT that "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", and its recommendation 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".<sup>11</sup>

39. Non-governmental sources expressed concerns about the lack of guarantees for incommunicado detainees and in particular the lack of access to a lawyer and a doctor of their choice. A forensic doctor of the *Audiencia Nacional* may visit the detainee during incommunicado detention; however, it is reported that they are often not trusted by the detainees, their reports vary greatly in terms of detail, and the forms used are not standardized.

40. Although by law, the detainee should have access to the lawyer assigned to him/her at any time during the police and judicial proceedings, in practice the lawyer only appears when the detainee is about to make and sign the formal statement, and has no opportunity to confer with the detainee. The detainees are reportedly informed that a lawyer is present in the room and they are provided with the lawyer's identification number, but they are unable to see them. The Special Rapporteur was informed that the reason the lawyer is not identified by name is for their security. The lawyer remains silent while the statement is being made, thereby effectively reducing his/her role to that of mere observer. Once the statement is signed the detainee is brought before an investigating judge of the *Audiencia Nacional* and sent to prison or released. At that stage, the detainee may file a torture complaint.

41. The Special Rapporteur received credible information that leads him to believe that, although torture or ill-treatment is not systematic in Spain, the system of detention as it is practised allows torture or ill-treatment to occur, in particular in regard to persons detained incommunicado in connection with terrorist-related activities. According to information received, torture or ill-treatment are most likely to occur during the initial period in police custody. Information from non-governmental sources indicates that torture or ill-treatment is used in particular to extract a statement from a detainee. The current, restricted implementation of legal safeguards appears to be inadequate. Detainees must have a right of access to a lawyer from the outset of detention, the lawyer must be present during the interrogation and the detainee must have the right to talk to the lawyer in private.

42. The Ombudswoman of the Basque Country provided the Special Rapporteur with information on interventions her Office had made with regard to the question of torture or ill-treatment. She stated that it did not receive information directly from persons detained incommunicado, but rather from their relatives or NGOs. The most common complaints received from relatives were about the way house searches were conducted; the failure to inform relatives after arrest about the whereabouts of the detainee or when they will be brought before a judge; ill-treatment in police custody, including threats, humiliation, insults, sleep deprivation, being forced to stand for long periods and questioning without legal counsel; and the conditions in which prisoners were transferred. NGOs commonly reported that detainees were subjected to continuous noise and light to prevent sleep, general threats and threats to harm relatives, exhausting physical exercises, being forced to stand, beatings to the head and humiliation. The third source of information was public complaints to the media. Complaints were also received

about the circumstances involving the arrest, such as excessive use of force or racist behaviour, and about the duration of detention; information was not provided about the whereabouts of detainees. Complaints also referred to ill-treatment, incommunicado detention, and problems relating to access to medical assistance.

43. The Ombudswoman reported on the monitoring of new initiatives. Relatives of persons detained said the situation regarding information had not improved since the Protocol for coordination of assistance to individuals held in incommunicado detention (2003) was adopted. The main limitation of the Protocol was that it did not prevent or clarify the most frequent allegations of ill-treatment, including deprivation of sleep, threats, questioning without lawyers, etc. Her Office would verify that audio-visual equipment was used at all places of detention, including incommunicado detention, and would monitor its use. It was too early to assess the effectiveness of the certificate of quality for procedures of detention to which all Basque police stations would be subject.

### **C. Investigations, prosecutions and reparations**

44. Many interlocutors emphasized the sensitivity of Spanish society to attacks on human dignity and integrity, with torture and ill-treatment arousing particular revulsion. They explained that this was a result of Spain's history during the Franco regime when human rights violations were perpetrated by the State with impunity. They stressed that democracy and the rule of law were well established in modern-day Spain. Because of its past, Spain's institutions had created the necessary safeguards to prevent such violations and would deal with any perpetrators appropriately. They cited the case of two high-ranking officials who were found guilty of illegal detention and murder of ETA suspects in 1983 and who were currently serving sentences for their crimes as proof that the Spanish criminal justice system would act in accordance with the law regardless of the rank of the perpetrator.<sup>12</sup>

45. According to information received, the legal framework, to which the Special Rapporteur referred above, has not been successful in eliminating torture or ill-treatment, which allegedly continues to be common. As discussed above, the legal framework has gaps allowing conditions where torture can take place, thereby denying full protection and guarantees for detainees. Non-governmental sources pointed to the role of the judicial process in perpetuating impunity - the pattern of nominal sentences for law enforcement officers convicted of torture or ill-treatment, the availability of pardons,<sup>13</sup> lax enforcement of sentences, discrepancies in standards of forensic medical reporting, as well as the continued practice of incommunicado detention - as contributory factors in the failure to eradicate torture and ill-treatment. The length of the judicial process is reportedly often so great that by the time a trial opens, accused officers may not be tried because the statute of limitations for the offence has expired.

46. In this context, the Special Rapporteur requested statistics in regard to the number of allegations of torture received, the results of the investigations, the disciplinary measures applied, and pardons granted (see paragraph 48). During a meeting a representative of the Civil Guard stated that there had been no convictions for torture or ill-treatment in the last few years with regard to anti-terrorism measures; the many allegations of torture were part of ETA's strategy against the State.

47. According to information furnished by the authorities following the visit in its communication dated 17 November 2003:

(a) From 1998 to 2002, disciplinary action had been initiated against 26 members of the National Police but none of them in connection with torture (action could have been taken for other forms of ill-treatment);

(b) From 1999 to 2003, disciplinary action had been initiated against 13 members of the Civil Guard for abuse of power or inhuman, degrading or discriminatory treatment (which constitutes a very serious offence); one disciplinary action was taken in 1999 for discrimination (which constitutes a serious offence). No information has been provided regarding disciplinary action for cases of torture. None of the disciplinary actions taken against members of the Civil Guard has involved deprivation of liberty;

(c) From 1999 to 2003, 178 complaints of torture, ill-treatment or offences against moral integrity had been filed against Civil Guards: 9 officers have been sentenced while 118 have been acquitted or their cases filed or discontinued. Decisions are still pending in 51 cases. Of the 178 complaints, 38 related to anti-terrorism operations and no Civil Guard involved in a counter-terrorist operation was sentenced during this period.

48. According to a communication dated 23 October 2003, updated by a communication dated 25 November 2003, from 1997 to 2003, the Supreme Court had handed down 35 convictions relating to torture: 13 acquittals and 22 convictions (7 of them related to torture of suspected terrorists). Of the 22 convictions, 6 were for injuries (*lesiones*) and 16 for torture (8 against members of the National Police, 4 against Civil Guards, 1 against local police, 1 against prison authorities, 1 against others).

49. According to information on pardons furnished by the authorities in a communication dated 3 December 2003:

(a) No pardon (*indulto*) was granted in 2001, 2002 or 2003;

(b) Eleven partial pardons were granted in 2000 for law enforcement officials sentenced to less than three months' imprisonment;

(c) Three partial pardons were granted in 1999. The sentence of imprisonment was maintained but the "*inhabilitación*" (disqualification from work) was commuted to suspension from employment;

(d) Six partial pardons were granted in 1998. The sentence of imprisonment was maintained but the "*inhabilitación*" (disqualification from work) was commuted to suspension from employment.

50. According to non-governmental sources, an examination of definitive court sentences brought against alleged perpetrators of torture and ill-treatment indicates that a majority of the victims of torture or ill-treatment whose complaints have been validated by the courts have had to wait more than 7 years from the moment of the incident before receiving a compensation award, and some have had to wait for between 15 and 19 years. There is reportedly no effective legislation in Spain guaranteeing fair and adequate compensation to torture victims in line with

obligations under international law, including the means for as full rehabilitation as possible, in line with obligations under article 14 of the Convention against Torture.<sup>14</sup> Standards used by the courts to calculate the amount of compensation are those set under the Insurance Law, which are applicable to injuries sustained in accidents (*delitos no dolosos*) and do not relate to injuries inflicted deliberately and with intent. Thus, they fail to take into account - or underestimate - the psychological effect of injury to the victim's moral integrity. It is of concern that the inadequacy of legislation and regulation in this area means that torture victims are not provided with the means for the fullest possible rehabilitation.

### **III. OTHER ISSUES**

#### **A. Dispersal of prisoners**

51. According to information received, the dispersal of prisoners convicted of links with terrorism began in 1989. It apparently has no grounding in law and is applied arbitrarily. Prisoners are kept far away from their families and lawyers, which can also cause problems in preparing their defence. Non-governmental sources said that dispersal is an added punishment and targets prisoners from the Basque Country. Relatives are said to face many obstacles in regard to visits owing to the distance. ETA prisoners are kept in Madrid during pre-trial detention and are then sent to prisons around the country. The authorities explained that this policy was applied so as to separate ETA terrorists from those prisoners who were to be reinserted into society. The Special Rapporteur recalls that principle 20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988, states that "if a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence". Furthermore the Standard Minimum Rules for the Treatment of Prisoners<sup>15</sup> requires in rules 79 and 80 that special attention shall be paid to the maintenance and improvement of social relations between a prisoner and his family as are desirable in the best interests of both, and that from the beginning of a prisoner's sentence consideration shall be given to his future after release, and he shall be encouraged and assisted to maintain or establish social relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

#### **B. Race-related torture**

52. According to information received from non-governmental sources, race-related torture and ill-treatment, including rape and sexual assault, are said to be frequent in Spain. Complaints of torture and ill-treatment by persons of non-Western European origin or by members of ethnic minorities such as Roma have been received. It is reported that racial profiling is common and the discriminatory use of identity checks has led to a situation in which persons of foreign origin or Roma have been abused and physically ill-treated by public officials. These individuals may then face difficulties in bringing a complaint, or seeing it through the judicial procedure. Other factors that contribute to the situation are fear of bringing complaints about law enforcement officers, particularly on the part of those who are awaiting work or residence permits, because of anxiety that they may be expelled from the country if they take any action; and the very real fear of bringing complaints because of the common practice whereby law enforcement officers lodge counter-complaints, or threaten other reprisals. Non-governmental sources reported that there are many cases of police ill-treatment against the Roma population; however, owing to historical



discrimination and exclusion they do not make complaints to the criminal justice system as they have no faith that they will obtain justice. In this context, the Special Rapporteur welcomes the recent revision of the Criminal Code to include, among the motives for considering a crime as torture, “discrimination of any kind”, in line with the definition of torture set out in article 1 of the Convention.

#### **IV. CONCLUSIONS**

**53. 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.**

**54. 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.**

**55. 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.**

**56. 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, that 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.<sup>16</sup>

57. 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.<sup>17</sup> 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<sup>18</sup> 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.<sup>19</sup>

58. 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.<sup>20</sup> 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.

59. 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<sup>21</sup> 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.

60. 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.<sup>22</sup> 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.<sup>23</sup> 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.

61. While one monitoring body - the Committee against Torture - has expressed serious concern about the incommunicado regime in the Spanish context<sup>24</sup> and another monitoring body, the Human Rights Committee - has stated that provisions should be made against incommunicado detention,<sup>25</sup> 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 15/2003 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*.

62. 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.

63. 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.

## **V. RECOMMENDATIONS**

64. 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.

65. 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.

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. **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.**

73. **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.**

### Notes

<sup>1</sup> See E/CN.4/2003/68/Add.1, paras. 1260 to 1485 and E/CN.4/2002/76/Add.1, paras. 1325 to 1510.

<sup>2</sup> A regional mechanism for monitoring the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (art. 7).

<sup>3</sup> Organic Law 10/1995 of the Penal Code.

<sup>4</sup> Draft Organic Law 621/000145 amending Organic Law 10/1995 of 23 November 1995 of the Penal Code.

<sup>5</sup> See article 17 of the Constitution.

<sup>6</sup> Introduced by Organic Law 6/1984 regulating the procedure of habeas corpus.

<sup>7</sup> This law was in its draft form before the Spanish Senate at the time of the visit of the Special Rapporteur.

<sup>8</sup> In article 282 bis. Amended by Organic Law 5/1999, organized crime is defined as the association of three or more individuals with a view to conducting the following offences in a permanent or reiterative way: abduction; offences related to prostitution; offences against the patrimony or the socio-economic order; offences against labour rights; offences against public health; forgery; arms trafficking; terrorism, and offences against historical patrimony.

<sup>9</sup> *Protocolo para la coordinación de la asistencia a personas detenidas en régimen de incomunicación.*

<sup>10</sup> According to article 65 of the Organic Law 6/1985 on Judicial Power, it is the Penal Chamber of the *Audiencia Nacional* that has competence, inter alia, for offences against the Crown, the high institutions of the State and the form of government; falsification and fraud; and drug trafficking.

<sup>11</sup> Conducted under the Socialist Administration between 1983 and 1987.

<sup>12</sup> In April 2000, General Enrique Rodríguez Galindo, along with the former Civil Governor, Julen Elgorriaga (Spanish Socialist Workers' Party), was sentenced to 60 years in prison for the murder of Joxean Lasa and Joxi Zabala.

<sup>13</sup> According to non-governmental sources, in January 2001 pardons were announced for 11 National Police officers and 3 members of the Civil Guard who had been convicted of crimes of torture. They reportedly had their sentences cut by two thirds. Shortly after the publication of the pardons, in a separate development, a posthumous medal was awarded to the former head of a political intelligence police unit during the Franco era. The police chief was reportedly responsible for the torture of hundreds of Basques. He was the first targeted victim of an ETA commando in August 1968. The medal is reportedly awarded to victims of terrorism.

<sup>14</sup> Law 35/95 relating to compensation of victims of torture reportedly only provides for financial compensation, except for victims of sexual assault. Moreover, compensation is allegedly linked to conviction of the perpetrator and in cases where the perpetrator cannot be identified even when the court has decided that a person was tortured, no compensation will be made available.

<sup>15</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>16</sup> See General Assembly resolution 57/219.

<sup>17</sup> See Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism (New York and Geneva, 2003), pp. 10 et seq.

<sup>18</sup> See, in particular, E/CN.4/2002/137 and A/57/173.

<sup>19</sup> European Court of Human Rights, *Selmouni v. France*, 28 July 1999, para. 101.

<sup>20</sup> *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 44 (A/58/44)*, para. 60.

<sup>21</sup> See 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* from 22 to 26 July 2001, CPT/Inf(2003)22, paras. 27-33.

<sup>22</sup> The CPT standards, CPT/Inf(2003)1, pp. 9 and 12.

<sup>23</sup> Most recently in Commission on Human Rights resolution 2003/32, para. 14.

<sup>24</sup> See *Official Records of the General Assembly*, *ibid.*, para. 62.

<sup>25</sup> Human Rights Committee, general comment No. 20, para. 11.

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