

**SPAIN:
BRIEFING
TO
COMMITTEE
AGAINST
TORTURE**

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AMNESTY
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SPAIN: PRELIMINARY BRIEFING TO THE UN COMMITTEE AGAINST TORTURE, 2009.

INTRODUCTION

Amnesty International submits this briefing for consideration by the Committee against Torture in view of its examination in November 2009 of Spain's fifth periodic report on the measures taken by Spain to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). This briefing summarises some of Amnesty International's main concerns about Spain's failure to implement some of its obligations under the Convention against Torture.

For many years Amnesty International, together with other international and national non-governmental organisations (NGOs), and a range of UN and Council of Europe human rights bodies, have expressed serious concerns regarding torture or other cruel, inhuman or degrading treatment committed by law enforcement officials in Spain and the effective impunity enjoyed by many in relation to these acts.

In a report published in November 2007, (*Spain: Adding insult to injury*, Index: EUR 41/006/2007) Amnesty International highlighted cases of individuals who described being hit, kicked, punched, whipped, threatened with a knife or gun and verbally abused or

threatened by police officers both in the street and while in police custody. In one case a detainee related to Amnesty International how police officers told him that if he did not cooperate, they would rape his girlfriend. In another case, a man lost hearing in one ear for several weeks as a result of blows to his head from a police officer during detention. Since the publication of this report, Amnesty International has continued to receive credible reports of torture and other ill-treatment by law enforcement officials.

Amnesty International's research indicates that the continuing allegations of torture and other ill-treatment by law enforcement officials stem from multiple failings by the Spanish authorities to comply with their international legal obligations which require them to take a range of legislative, judicial, and administrative measures to prevent ill-treatment, and to ensure the prompt, independent, impartial and thorough investigation of any case where there is reason to believe ill-treatment may have occurred. In addition, Spain continues to apply legislation permitting the use of incommunicado detention, despite the increased risk of torture and other ill-treatment such regimes are known to present. Amnesty International has received credible reports of torture and other ill-treatment from detainees held incommunicado including sleep deprivation, forced exercise to exhaustion, and asphyxiation. Amnesty International is seriously concerned by the lack of any investigation of such allegations by the relevant legal and political authorities in many cases.

Amnesty International also views with concern actions by the Spanish authorities to extradite, deport, or otherwise forcibly return individuals from Spanish territory to countries where they face a risk of torture or other ill-treatment, in violation of Article 3 of the Convention against Torture. Amnesty International has documented three such cases in the past year. In one of these cases the individual who was forcibly returned has not been seen or heard from by their lawyer or family after being handed into the custody of state agents of the receiving country. In another, the individual was removed from the detention centre where he was being held in Spain in November 2008 but, as of February 2009, his lawyer and family had received no formal notification of his expulsion and have neither seen nor heard from him since he was taken from the detention centre. Measures taken to combat irregular migration, particularly on the southern border, have also created risks of *refoulement*.

Amnesty International is also concerned that legal measures to combat gender-based violence are failing to provide adequate protection and reparation to women. Migrant women face particular obstacles to accessing specialised legal and social services, which puts them at increased risk of gender-based violence and killings.

The briefing concludes with information on the investigations into enforced disappearances which took place during the Spanish civil war and during the Franco dictatorship.

TORTURE IN THE CRIMINAL CODE

Articles 1 and 4.

In its 2002 concluding observations on Spain's fourth periodic report, the Committee against Torture recommended that Spain 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.

While some amendments to the definition of torture in Spanish law were made in 2003, Amnesty International considers that further law reform is necessary in order to ensure the criminalization and prosecution of torture and other ill-treatment as required by the Convention against Torture.

The Spanish Criminal Code defines and prohibits torture in Article 174. The Criminal Code does not include in its definition of torture acts committed with the intention of intimidating or coercing the victim or a third person, as stated in the Convention.

Rape committed in custody is not specifically included in the definition of acts of torture, either in legislation or jurisprudence.

Furthermore, the law does not explicitly exclude either "due obedience" or "superior orders" as justifications for acts of torture.

In 2003 the definition of torture was revised to include torture when committed "for any reason based on discrimination of any kind", in line with the definition in Article 1 of the Convention against Torture. Amnesty International is concerned, however, that this provision is rarely applied in the courts.

RIGHT TO INVESTIGATION AND REMEDY

Articles 12, 13 and 14.

In interviews with Amnesty International in 2007, incidents of ill-treatment by law enforcement officials were generally acknowledged by representatives of human rights ombudsperson offices, judicial authorities, and police bodies. Many of them, however, claimed that such incidents occurred only in isolated instances and that the overwhelming

majority of complaints of ill-treatment made against law enforcement officials were false (without specifying whether these complaints had actually been investigated independently, impartially and thoroughly). This phenomenon was noted with concern by the Committee against Torture in its concluding observations on Spain's fourth periodic report in 2002. While Amnesty International does not consider ill-treatment by the Spanish law enforcement officials to be routine, based on its research the organization disputes the suggestion that its incidence is rare and that the responsibility for its occurrence lies exclusively with a handful of rogue police officers. Consequently, Amnesty International believes that Spain is continuing to fail in its obligation to conduct prompt and impartial investigations into allegations of torture and bring those responsible to justice, as they were reminded to do by the Committee against Torture in its concluding observations in 2002.

Amnesty International is deeply concerned that the failure of the Spanish authorities to recognise the widespread occurrence of torture and other ill-treatment and the failings of the internal disciplinary and criminal investigation system are exacerbating the climate of impunity, which in turn fosters further incidents of ill-treatment.

The failure to ensure a prompt, independent, impartial and thorough investigation into each credible allegation also impedes the identification of structural deficiencies that facilitate ill-treatment and thus prevents institutional improvements from being implemented. Finally, Amnesty International is concerned that the failure to ensure accountability of those individuals responsible for ill-treatment has undermined the credibility of the law enforcement bodies in Spain as a whole.

Amnesty International's research indicates that following an incident of alleged ill-treatment by law enforcement officials, cases frequently follow the same pattern: non-existent or inadequate internal investigations and rapid provisional discharge of any judicial complaint related to the ill-treatment on the basis of a lack of evidence, even when medical or other credible evidence exists to support the allegations. Many alleged victims of torture or other ill-treatment have complained to Amnesty International that investigating judges and prosecutors relied too heavily on statements by police while not giving equal credence to victims or witnesses.

When cases do come to trial, they often end in acquittal due to the non-identification of the officers responsible, or in nominal sentences. It is not unusual for such proceedings to continue for several years, following repeated appeals against judicial decisions to provisionally discharge the complaint.

Amnesty International is also concerned about cases in which law enforcement officials lodged complaints against people who complained of ill-treatment which appeared to be designed to discredit the complainant's testimony, in an attempt to mitigate or cover up evidence of their own wrongdoing or to intimidate victims of ill-treatment into withdrawing their own complaint against police officers.

Other factors identified by Amnesty International as contributing to effective impunity for ill-treatment by law enforcement officials in Spain include:

- Inadequate initial training and insufficient ongoing training in the appropriate use of force and the applicable human rights standards;
- lack of protocols and clear guidance for police on use of force;
- lack of systematic video and audio-recording in all areas of police stations where detainees may be present (e.g. cells, communal areas, interrogation rooms);
- failure to ensure that detainees are examined by a medical doctor, outside the hearing and presence of the police (unless the doctor concerned requests otherwise in a particular case);
- inaccurate or incomplete medical reports by examining doctors;
- obstacles to an individual being able to register a complaint about police conduct at police stations and courts;
- excessive delay in criminal proceedings against law enforcement officials suspected of ill-treatment and complaints *by* law enforcement officials being heard much sooner than complaints *against* them, even when relating to the same incident;
- difficulty identifying officers responsible for ill-treatment because they are not wearing identifying badges and/or because they wear balaclavas masking their faces;
- failure by police officers to prevent and/or report ill-treatment by colleagues, and a misguided “esprit de corps” which leads to officers covering up unlawful behaviour of others;
- failure of internal police complaints mechanisms to ensure allegations are promptly, thoroughly and impartially investigated;
- failure of the government to establish an effective independent mechanism to investigate allegations of serious human rights violations by police officers;
- granting of pardons to police officers convicted of ill-treatment;
- failure to dismiss or apply other appropriate disciplinary sanctions, and even in some cases, promotion of officers convicted of ill-treatment.

Amnesty International's November 2007 report, *Spain: Adding insult to injury – the effective impunity of police officers in cases of torture and other ill-treatment* (Index: EUR 41/006/007), examines the issue of impunity in detail and includes numerous illustrative case examples of the organization's concerns. What follows below is a summary of some of the key points. A copy of the full report is attached to this briefing, together with two other previous Amnesty International reports relating to this topic:

- *Spain: Crisis of identity: Race-related torture and ill-treatment by State Agents* (Index: EUR 41/001/2002). April 2002.
- *España: Acabar con la doble injusticia: Víctimas de tortura y malos tratos sin reparación.* (Available in Spanish only). December 2004.

LACK OF INDEPENDENT INVESTIGATION

Many of the investigations into complaints of ill-treatment that Amnesty International researched demonstrated an apparent lack of impartiality and objectivity.

At present, criminal investigations into cases of alleged ill-treatment are investigated by investigating judges with the assistance of the judicial police. In some instances the investigating judge will request that evidence be gathered by officers from a police force different to that being investigated (for example, Civil Guards could be asked to investigate allegations against a national police officer, or national police officers might investigate

allegations against officers from autonomous regional police forces) but this practice is not standardised or compulsory. In some cases investigated by Amnesty International an officer from the same force as those alleged to have been responsible for the ill-treatment was assigned to investigate the allegations against them. Such investigations do not meet the requisite standards of independence.

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

FAILURE TO INVESTIGATE

Amnesty International has documented a pattern throughout Spain where complaints against the police are frequently provisionally discharged by investigating judges immediately or after minimal investigation. This appears to be the result, in many cases, of judges and prosecutors relying heavily on statements by police, while not giving equal credence to the statements of victims and other witnesses. Amnesty International has also noted the failure of investigating judges to open investigations on their own initiative into apparent ill-treatment in cases where the victim does not make a formal complaint but evidence exists to indicate ill-treatment may have occurred.

The case of Javier S is illustrative of Amnesty International’s concerns about judicial bias in favour of police testimony over the testimony of the complainant.

THE CASE OF JAVIER S

According to the complaint he submitted to the investigating court:

Javier S¹ was arrested by two national police officers in Plaça de la Universitat (Barcelona) on the evening of 3 June 2005 while sitting with a small group of friends who had just participated in a gay pride demonstration. The officers grabbed him, beat him, stamped on his head, neck and back, and then handcuffed him before throwing him into a police car. He was not informed of the reason for his arrest. Along with several others who had also been detained, he was taken to the police station in Via Augusta.

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

have muscle spasms. The other detainees and one of the police officers present were concerned for his welfare and asked for him to be taken to hospital but this request was denied. After a few minutes two police officers picked him up from the bench and he believed he was being taken for medical treatment. However, instead of doing so, the same police officer who had kicked him hit Javier S in the chest again while trying to wipe away his boot print. He insulted Javier S continuously saying, "You're such a little faggot."

Javier S was later taken to Hospital del Mar for a medical examination. The doctor gave him some medication and instructions on how to treat his injuries; but upon return to the police station the police officers ignored the medical advice and did not give him the medication. Javier S spent the night sleeping on the floor of the police cell without a mattress before being transferred the next day to the police station in Via Laietana.

Javier S told Amnesty International that immediately after their release from police custody on 7 June 2005, he and four others of those arrested with him made formal complaints of ill-treatment at Investigating Court 22. Their complaints were rejected by the judge on 2 September 2005 who concluded that the police had acted with the minimal force necessary at the time of the arrest. The judge did not comment on the allegations of ill-treatment inside the police station and did not call any of the complainants to make a statement.

According to court documents which Amnesty International has reviewed, the judge concluded that "there is no reason to consider... that the police report is contrary to the truth."² He reasoned that although police action should be independently investigated, "this requirement does not imply that the police ... must always and automatically be excluded on grounds of partiality from reporting on the events."³

The complainants appealed against this decision on 19 October 2005; the judge continued to reject the complaint. Javier S appealed again, to the Provincial Criminal Court of Barcelona, which on 7 December 2005 overruled the lower court's decision and ordered it to investigate the allegations. In contrast to the investigating court, the appeal court noted in its decision the "patent lack of impartiality" and indeed "positive interest"⁴ of the police to produce reports favourable to their colleagues when investigating such allegations.

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

On 8 March 2006 the investigating judge closed the case again on the basis that the testimonies given by the police officers who had appeared in court (and who the

complainants claimed were not the ones present in the police station during the incident) did not indicate any misconduct had occurred. The complainants appealed again, calling for the investigating judge to request from the police station a full list of officers on duty on the day of the incident in order to identify and question those believed to have been involved in the assaults, but to date they have been unsuccessful in reopening the case.

The repeated closure of the case and the judge's failure to investigate promptly, thoroughly and impartially have resulted in the case being closed without ever reaching trial. The only recourse left to the complainants under Spanish law is to petition the Constitutional Court on the grounds of denial of due process. This is, however, a lengthy and expensive procedure which Javier S says he is financially unable to pursue.

INCOMPLETE OR INACCURATE MEDICAL REPORTS

It is undisputed that the effective exercise of detainees' rights to medical examinations is an important tool in preventing ill-treatment from occurring and is also of great importance in successfully prosecuting those responsible when ill-treatment occurs. Many Spanish judicial and prosecutorial authorities interviewed by Amnesty International said that they considered medical reports from the detention period to be the most important piece of evidence available in cases of alleged ill-treatment by police, particularly in cases in which the ill-treatment was alleged to have taken place in custody, where it is likely to have taken place out of sight of independent witnesses.

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

Amnesty International was also alarmed to discover during research in 2007 that some judges believed it was compulsory for police officers to remain present during medical examinations (in case of risk of flight or injury to the doctor), even stating that they would prosecute police officers for negligence if they left detainees alone with a doctor. This is in direct contradiction of the human rights standards elaborated by the CPT, which state that "As regards the medical examination of persons in police custody, all such examinations should be conducted out of the hearing, and preferably out of the sight, of police officers".⁵

LACK OF PREVENTIVE MEASURES

For many years human rights bodies including the Committee against Torture, and Amnesty International and other NGOs, have recommended that the Spanish authorities introduce systematic and comprehensive video- and audio-recording in all areas of police stations where detainees may be present (except where it would violate their right to consult with their

lawyer or a doctor in private). In this regard, Amnesty International has welcomed the introduction of video-recording of communal areas of police stations by the Basque autonomous police force (Ertzaintza), and the commitment expressed by the Catalan autonomous government in 2007 to introduce CCTV video-recording in police stations under its control. The national government has committed in its Human Rights Plan (published on 10 December 2008) to introduce CCTV cameras to monitor detainees held in incommunicado detention. Verification of the implementation of these commitments is required.

The recommendation to establish video- and audio-recording in police stations was widely supported by all of those interviewed by Amnesty International delegates in Spain in 2007, including police representatives from various trade unions, representatives of the Office of Public Prosecutions, representatives of human rights ombudspersons' offices, ministers and judges. Police and internal affairs representatives from the Ertzaintza interviewed by Amnesty International reported that accusations of ill-treatment have shown a significant decline since the introduction of video surveillance in the detention areas and interrogation rooms of their police stations.

However, the measures currently applied across Spain still fall short of the recommendations made by the Committee against Torture, the CPT and other human rights bodies aimed at combating ill-treatment and impunity most effectively, as video- and audio-recording equipment is restricted at present to a comparatively limited number of police stations across Spain as a whole and even in those police stations where such equipment is installed, it does not comprehensively record all areas where detainees may be present (i.e. communal areas such as corridors, individual cells, and interrogation rooms). Consequently, it is not as effective a deterrent as it could be.

INTIMIDATION OF COMPLAINANTS

Amnesty International has found that in many cases of ill-treatment it has investigated, individuals making claims of ill-treatment by police have found themselves charged with resisting authority, resisting arrest, assault on a public officer, or other serious offences. Complainants in such cases have told Amnesty International that they believed such charges were filed in order to pressurise or intimidate them into withdrawing their complaint, or used as a tactic to undermine the credibility of their own complaint and testimony.

This practice was recognised by members of various police forces interviewed by Amnesty International in 2007, who acknowledged the "automatic habit" of filing such charges as a "self-defence tactic" aimed at protecting themselves against accusations of false imprisonment or assault. One officer remarked to Amnesty International delegates that it was difficult even for other officers to know if their colleague's claim was true or not as some officers had been known to tear their own uniforms in order to lend credence to their story if they knew they had used excessive force. The determination of what force was "necessary" appeared to be interpreted extremely broadly by some of those police officers interviewed by Amnesty International.

LACK OF IMPARTIALITY, PROMPTNESS AND THOROUGHNESS IN INVESTIGATIONS

In the course of its research into police ill-treatment and related impunity in Spain, Amnesty International has noted a recurring pattern of investigating judges dismissing cases after giving more weight to police testimony than that of alleged victims of ill-treatment and other witnesses - even in cases where there was additional evidence which contradicted the testimony of the police. Even in cases in which multiple victims corroborated each other's testimony and police statements contradicted each other and themselves, or where there was physical evidence such as medical reports to support victims' allegations, it appears that judges accepted the word of police witnesses as sufficient proof to provisionally discharge a case. As a result, cases are often closed without thorough investigation, as seen in several of the cases cited in Amnesty International's report *Spain: Adding insult to injury*, Index: EUR 41/006/2007.

While recognising that the presumption of innocence applies to all persons charged with a crime, Amnesty International is concerned about a pattern that emerged in cases it investigated where it appeared that investigating judges were ignoring evidence that contradicted statements of police officers who were under investigation for criminal conduct. Enquiries by the Council of Europe Commissioner for Human Rights into a case of alleged police misconduct in Spain highlighted this contradiction by asking "How ... can it be possible for a judge investigating allegations of ill-treatment simply to ask the alleged perpetrators for information and take their word for it and drop the cases without further investigation."⁶

A matter of particular concern to Amnesty International is the repeated reference by those police officers, prosecutors and judges interviewed to the concept of "presumption of truth" ("la presunción de la veracidad") in relation to police testimony, according to which the word of a police officer is *a priori* taken as truth. Amnesty International's research has indicated that police testimony is not just taken as truth in the absence of other evidence, but even when it is directly contradicted by other evidence. Individual police officers, parliamentarians, staff of human rights ombudspersons and public prosecutors all referred to this concept, although representatives of the judiciary and the Attorney General assured Amnesty International that the "presumption of truth" was not legal doctrine. The general confusion over the existence and/or legal status of the concept raises clear concerns over institutionalised and individual lack of impartiality in which police testimony is weighted more favourably than any other evidence, even when that testimony is from a party with an interest in the case under investigation. Amnesty International considers that the application of "the presumption of truth" is inconsistent with the obligation to ensure impartial investigation of crimes, including torture and other ill-treatment, and to ensure that justice is not only done but seen to be done.

Amnesty International's research also highlights that where judges and public prosecutors show reluctance to investigate a case of alleged police ill-treatment, the investigatory stage may proceed extremely slowly. The case of Sergio LD illustrates this issue.

THE CASE OF SERGIO LD

On 16 March 2002, Sergio LD⁷ attended an anti-globalisation demonstration in the centre of Barcelona. Towards the end of the event some violent incidents occurred and around 100 people were arrested. Among those arrested was Sergio LD, who was later charged with public disorder, damaging property and causing injury to several national police officers. He has always denied responsibility for these offences and claims he was the victim of mistaken identity.

Sergio LD reported that during his arrest and detention he was subjected to a series of assaults and threats which resulted in physical injuries that lasted for several months. For the past five years he has been undergoing counselling for the resulting psychological harm. In his complaint to the investigating court, Sergio LD states that:

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

The van was driven away and after a short time Sergio LD was pulled out of the vehicle and thrown to the ground. Two officers then picked him up and transferred him to a police car, forcing him violently against it head first "like a battering ram" before pushing him inside.

Upon arrival at the La Verneda national police station an officer from the station punched Sergio LD in the stomach. He was then transferred to a room where he was made to kneel and look at the floor, while still wearing handcuffs. A police officer closed the window blinds and then three officers kicked and punched Sergio LD all over the body until he began to have muscle seizures and became temporarily incontinent. He believed they were going to kill him. Following this Sergio LD was made to sit on a chair with his hands tied behind his back while another officer took his identity papers. Sergio LD had begun to vomit at this time and the police officer gave him a rubbish bin to be sick in. Afterwards a police officer dressed in riot gear entered the room and, encouraged by those already present, hit Sergio LD in the face so hard that he fell off the chair. The officer then stamped on his head.

At this point, Sergio LD was taken to the medical unit inside the police station where his injuries were cleaned. The police officers remained present throughout the medical examination, leaving Sergio LD unable to speak to the doctor in private and report the abuse he had suffered. He was given a tranquilizer and the doctor recommended that he be taken to the emergency ward at the hospital due to his head injuries.

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

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

Sergio LD told Amnesty International that on 6 September 2002 he made a formal complaint to Investigating Court 2 of Barcelona regarding torture, assault on personal integrity and injury. As there were no CCTV cameras in the police station there was no video evidence to substantiate his allegations, but they were supported by numerous medical reports and positive identification of several of the officers during identity parades. Despite the gravity of the facts alleged, the public prosecutor and investigating judge classified the case as one of "faltas" (misdemeanours) instead of "delitos" (crimes) which meant that no in-depth preliminary investigation was conducted into the incident and the case was provisionally discharged in January 2003 on the basis of a lack of evidence.

Sergio LD presented an appeal against this decision to the Provincial Criminal Court of Barcelona which ruled, on 9 December 2003, that the actions of the lower court had been incorrect and "absolutely unacceptable" and ordered the lower court to open an investigation into a possible crime of torture. To Amnesty International's knowledge, the case is still in the investigatory stage.

FAILURE TO IMPOSE APPROPRIATE SANCTIONS

Amnesty International is concerned about cases in which the sentence imposed on police officers convicted of ill-treatment (including ill-treatment leading to death in custody) do not adequately reflect the grave nature of the offence. This practice is inconsistent with the government's obligations under Articles 2 and 4 of the Convention against Torture and Amnesty International considers that it contributes to a climate of effective impunity amongst law enforcement officials.

Amnesty International notes that the Committee against Torture considered that the imposition of lighter penalties and pardons in a case of torture in Spain violated Articles 4 and 2 of the Convention against Torture in its 2005 decision on the case of Kepa Urra Guridi

(UN Committee against Torture decision, 17 May 2005, Communication No. 212/2002).⁸

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

In Amnesty International's report *Spain: Adding insult to injury* (Index: EUR41/006/2007) one of the cases examined concerns a national police officer, who, according to sources interviewed by the organisation, has been accused of ill-treatment in at least four other unrelated cases. Only one of these cases has reached trial; the other cases were closed at the initial investigatory stage. Amnesty International also noted that the same officers are implicated in two separate cases examined in the report.

One of the officers convicted in relation to the ill-treatment of Juan Martínez Galdeano (who died in police custody following ill-treatment in July 2005) was the subject of a complaint of serious ill-treatment made by another detainee, on 25 February 2005, filed at Investigating Court 2 of El Ejido, Almería. The complainant stated that he had been severely beaten while handcuffed and threatened with death both at the time of arrest and during his three-day detention in police custody. Newspapers reported that the investigating court had taken no action to investigate this complaint at the time of Juan Martínez Galdeano's death five months later and that the officer in question was still on active duty. According to the internal investigation by the Civil Guard into the death of Juan Martínez Galdeano, the Civil Guard hierarchy had not been informed that the officer had been implicated in any previous allegations of ill-treatment.

In the following case, a police officer convicted of torture was promoted to regional chief of police:

THE CASE OF JUAN ANTONIO GIL RUBIALES

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

In 1983 the Provincial Criminal Court of Madrid acquitted the two officers on grounds of lack of evidence linking them to the injuries suffered by the deceased. On the order of the Supreme Court in 1985 the Provincial Criminal Court was required to restate its judgment on the grounds that the original judgment issued was insufficiently clear. The court confirmed its acquittal of the two suspects but this time on the grounds that there was no evidence of ill-treatment at all, notwithstanding the existence of forensic reports

to the contrary. In September 1989 the Supreme Court overruled the Provincial Criminal Court and convicted both officers for the crime of torture, sentencing them to two and three years of suspension without pay from their posts respectively and a maximum of four months' detention ("arresto").

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

Amnesty International considers that the continuing allegations of ill-treatment by police officers result from multiple failings by the Spanish authorities to comply with their international legal obligations which require them to take a range of legislative, judicial, and administrative measures to prevent ill-treatment, bring those responsible to justice, and ensure victims receive reparation.

INCOMMUNICADO DETENTION

Article 11

Spanish legislation retains provisions for holding detainees incommunicado which continue to be applied. The incommunicado regime can be applied to any category of detainee for up to five days, but it is most frequently applied to detainees held on suspicion of involvement in terrorism. In terrorism related cases, incommunicado measures can be applied for up to a total of 13 days (in police custody and on remand).

Detainees held in incommunicado detention are deprived of effective access to both a lawyer and a doctor of their own choice, and are unable to inform their family and friends of their detention. No other European Union country maintains a detention regime with such severe restrictions on the rights of detainees.

Incommunicado detention legislation has been maintained and amplified by successive Spanish governments, despite the calls for over a decade by various UN bodies including the Committee against Torture, the CPT, and human rights organisations, to take measures to remove legislation on incommunicado detention from national law. Most recently, in 2008, the Human Rights Committee and the Special Rapporteur on counter-terrorism called for the abolition of incommunicado detention legislation in Spain.

Successive Spanish governments have taken no action to implement these recommendations

and in fact acted in direct opposition to them in 2003 by extending the maximum time limit for incommunicado detention (in police custody and on remand) from five to 13 days.

In addition to violating important rights of detainees which are essential to ensure a fair trial, - including prompt, effective access to legal representation - the use of incommunicado detention has been strongly criticised by international human rights bodies for facilitating torture and other ill-treatment of detainees.⁹

Amnesty International is, furthermore, deeply concerned by the propensity of the Spanish authorities to label all allegations of torture or other ill-treatment made by detainees held incommunicado as a tactic of an organised criminal strategy to discredit the state. Where such a reaction is made before any investigation into the substance of these allegations has taken place it can only contribute to a climate of impunity for acts of torture and other ill-treatment. It is also contrary to Spain's obligation, including under Article 12 of the Convention against Torture, to ensure a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture may have taken place.

CURRENT LEGISLATION AND PRACTICE

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

Under the incommunicado regime the rights of detainees are restricted in various manners including the following:

- Individuals held incommunicado do not have the right to be assisted by a lawyer of their own choice. Legal assistance is provided by a duty lawyer appointed by the Bar Association, on request of the police.
- Individuals held incommunicado do not have the right to consult with a lawyer in private (namely the duty lawyer appointed to represent them) at any time during their detention incommunicado (both in police custody and on remand).
- Individuals held incommunicado do not have the right to communicate, or have communicated, to a family member or other person of their choice the fact and place of their detention. Furthermore, foreign nationals do not have the right to have such information communicated to their consulate.
- Individuals held incommunicado do not have the right to a medical examination by a doctor of their own choice. Incommunicado detainees may receive a second medical examination

on request but this will also be conducted by a state appointed doctor.

Furthermore, individuals held on suspicion of involvement in terrorism-related offences or organised crime - whether or not they are being held incommunicado – may be held in police custody for up to five days (120 hours) after arrest before being presented to a judicial authority.

In 2003 the Basque Government (Department of Interior, in consultation with the Department of Justice, Labour and Social Security and Department of Health) introduced the “Protocol for the Coordination of Assistance to Persons Detained Incommunicado” and the “Assistance Service for Relatives of Incommunicado Detainees” for the Ertzaintza. The main features of the protocols include additional and more comprehensive medical exams of detainees, and the facilitation of information to incommunicado detainees’ relatives concerning their whereabouts and physical condition. These protocols represent an improvement on standard Spanish legislation, but do not counteract the most serious concerns regarding such legislation. In June 2008 Amnesty International was also informed by the Counsellor of Interior for the Basque Government, Javier Balza Aguilera, that the incommunicado regime had not been applied by the Basque autonomous police force to any detainee in 2007 or up to that point in 2008.

In January 2008 it was announced that the Spanish Ministry of Interior was taking measures at the national level to install video surveillance cameras to monitor incommunicado detainees throughout the entire period of detention, but would not include interrogation rooms. The move was intended to help prevent possible ill-treatment of detainees, and to deter false allegations of ill-treatment from being made. This commitment was reiterated in the National Human Rights Plan published by the government on 10 December 2008.

However, the use of CCTV cameras to record detainees held incommunicado is not compulsory and is only used when explicitly requested by the judge responsible for the case. Amnesty International was informed by the President of the Criminal Chamber of the National Court in June 2008 that judges only request recording in approximately 50 per cent of cases, making the measure obsolete on many occasions. Other senior judicial representatives interviewed by Amnesty International explained that law enforcement officials considered it a display of personal distrust when judges order the measure, consequently making it a sensitive issue for judges to apply. They stated that in order to be effective, video recording must be made compulsory, by law, in all cases.

LACK OF EFFECTIVE LEGAL ASSISTANCE

Individuals being held incommunicado may not be represented by a lawyer of their own choice. A duty lawyer is assigned to the detainee by the Bar Association, on the request of the police, and must attend at the police station within eight hours of being called. Although this lawyer must be present for “formal” police interrogations and when the detainee makes a statement to police, Amnesty International was informed by a representative of a judges’ professional association that in practice incommunicado detainees are also questioned “informally” by police with no lawyer present.¹¹ This allegation was reiterated by other legal professionals. One lawyer even told Amnesty International that it was his practice, upon entering the interrogation room, to ask his client if this was the first time he or she was being questioned. Although the results of any interrogation conducted without a lawyer present are

not admissible in court, Amnesty International was told that in practice police reports submitted in evidence sometimes refer to information obtained in such informal interviews.¹² Furthermore, the opportunity may be used to exert illegitimate pressure – physical or psychological – on the detainee.

Furthermore, in violation of the internationally guaranteed right to counsel, the assigned lawyer is not permitted to communicate with their client in private (out of hearing of law enforcement officials) at any time during the period of incommunicado detention, both within police custody and on remand.¹³ In the case of *Brennan v. UK* (judgment of 16 October 2001) the European Court of Human Rights stated that:

“an accused’s right to communicate with his advocate out of hearing of a third person is part of the basic requirements of a fair trial and follows from Article 6 § 3 (c). If a lawyer were unable to confer with his client and receive confidential instructions from him without surveillance, his assistance would lose much of its usefulness”.¹⁴

The Court concluded that:

“the presence of the police officer within hearing during the applicant’s first consultation with his solicitor infringed his right to an effective exercise of his defence rights and ... there has been, in that respect, a violation of Article 6 § 3 (c) of the Convention taken in conjunction with Article 6 § 1” [relating to right to legal assistance of own choosing and fair trial, respectively].¹⁵

Some judges of the National Criminal Court of Spain have expressed support for altering these restrictions to give incommunicado detainees the same rights as ordinary detainees to consult with a lawyer in private after making their statement to police.¹⁶

At the end of the police interview, the duty lawyer acting on behalf of the detainee is allowed to put questions to the detainee and have these recorded as part of the formal statement. However, Amnesty International has been informed by a variety of sources that lawyers are sometimes ordered by police officers not to speak.¹⁷ Lawyers who have attempted to intervene, or who asked for the professional identity number of the police officers present to be recorded, have reported to Amnesty International that such requests were met with aggressive and intimidating treatment from police officers. Amnesty International considers that such practices create a further *de facto* bar to effective legal assistance and are contrary to Spanish legislation and jurisprudence, which recognises the right of an “active presence of the lawyer” during interrogations.¹⁸

The importance of effective legal representation for detainees making a statement before police is made all the more significant by the fact that, under Spanish law, where a detainee has made a statement in police custody but later chooses to remain silent before the investigating judge or during trial, the police statement may be used as evidence against them. This principle has been upheld by Spanish courts even in cases in which the detainee alleged that the police statement had been extracted under torture.¹⁹

In its examination of Spain’s fifth periodic report in 2008, the Human Rights Committee

expressed its serious concern at the fact, amongst other things, that incommunicado detainees are unable to choose their own lawyer. The Human Rights Committee called on Spain to abolish the incommunicado detention regime and ensure all detainees have the right to appoint the lawyer of their own choice – who should be present in all interrogations – and consult with him or her in confidence.

LACK OF EFFECTIVE JUDICIAL SUPERVISION

For a detainee to be held incommunicado, the law enforcement agency responsible for the individual's arrest must make a request to the investigating judge for incommunicado measures to be imposed within 24 hours after the arrest. The judge has a further 24 hours to grant or deny this request. There is no obligation for the detainee to be presented before the judge when this decision is made, either initially or if it is extended.

Under Spanish law, there is no obligation for the judge personally to see a detainee held on terrorism-related charges (whether or not they are held incommunicado) until five days (120 hours) after their arrest.

Every order for incommunicado detention must be substantiated in writing by the competent judge in each individual case and each time it is extended. Lawyers interviewed by Amnesty International reported that it is common for the “reasoning” of the judge when granting incommunicado measures to be very brief and generic, sometimes simply referring that the measure “has been granted in response to a request from police”.²⁰ One lawyer told Amnesty International “‘Copy-paste’ put an end to detainees’ rights”.

Article 520bis of the Spanish criminal procedure code authorises ongoing judicial supervision of the detainee during incommunicado detention, granting a judge the power to request information at any time during the incommunicado detention period, or seek information personally or by delegation, concerning the detainee's situation. However, this is left to the judge's individual discretion. Amnesty International was informed by the President of the Criminal Chamber of the National Court in 2008 that, in practice, judges rarely avail themselves of this power.

LACK OF ACCESS TO DOCTOR OF OWN CHOICE

Spanish law permits detainees held incommunicado to see court-appointed forensic doctors every day but does not allow them to be examined by a doctor of their own choice. They may request a medical examination by a second doctor, but s/he will also be state-appointed.

The Committee against Torture and other human rights bodies have repeatedly recommended that in addition to being examined by a state-appointed forensic doctor, detainees held incommunicado should be granted the right to be examined by a doctor of their own choice.²¹ According to information available to Amnesty International some judges at the National Criminal Court have, on occasion, permitted detainees held incommunicado to be examined by a doctor of their own choice, but this practice has not been applied in a systematic manner.

It should be noted that the National Human Rights plan presented by the government on 10 December 2008 includes a commitment to guarantee incommunicado detainees the right to be examined by a second doctor, selected by the head of the National Preventive Mechanism for the Prevention of Torture; but not a doctor freely chosen by the detainee as has been recommended by CAT and other human rights bodies.

A study published in November 2008 in the journal *Forensic Science International*, which examined 425 medical reports issued on incommunicado detainees in the Basque Country between 2000 and 2005²², concluded that the quality of reporting was “unacceptable” and reflected “insufficient and inadequate medical examinations”. The majority of reports lacked formal structure, contained inadequate information on injuries and state of health, and did not include conclusions from the examining doctor on whether injuries were consistent with allegations of ill-treatment. None of the medical reports followed the standard format recommended by the CPT, and only nine followed the standard format recommended by the Ministry of Interior.

The study notes that “The medical examination is supposed to represent a possibility for the detainee to have a professional assessment of his testimony about ill-treatment and a safeguard for police officers against false accusations”. It concluded that the failure of the appointed doctors to conduct thorough and effective examinations of the detainees in these cases, paying particular attention to examining, assessing and recording any allegations or evidence of ill-treatment, rendered this supposed safeguard useless. The cause of this failure was identified as a combination of inadequate guidance to doctors on the importance of their role as safeguard and duty to report possible ill-treatment; inadequate training on diagnostic procedures for proper documentation of ill-treatment and a lack of formal protocols or reporting guidelines; the dual loyalty felt towards the detainee/patient and the appointing authority; and a lack of privacy during medical examinations which makes detainees less likely to cooperate fully due to fear of reprisals.

LACK OF NOTIFICATION TO FAMILY MEMBERS

Amnesty International is concerned that under current Spanish legislation, incommunicado detainees are not permitted to communicate the fact or location of their detention to family members or other persons of their choice, or have this information communicated on their behalf, for the duration of the incommunicado period.

Under the “Assistance Service for Relatives of Incommunicado Detainees” protocol introduced by the Basque Government in 2003 for the Ertzaintza, a 24-hour telephone line was established to allow the families of incommunicado detainees to obtain information on the reason for detention, location, and state of health of the detainee, as well as for family members to provide information to the police on the detainee’s medical needs. However, Amnesty International is concerned that the protocol is not always correctly adhered to in practice. Amnesty International was informed by representatives of the Basque Ombudsman’s Office (Ararteko) that relatives who have called the telephone line to find out where their family member has been detained have been given inadequate information, for example simply, “In the Basque Country”.

The following case highlights the type of torture and other ill-treatment alleged by some detainees who have been held incommunicado, and the lack of any investigation into such allegations by the relevant judicial and ministerial authorities.

THE CASE OF MOHAMMED FAHSI

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

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

Mohammed Fahsi told Amnesty International that upon arrival at the Civil Guard headquarters he was treated in a threatening, aggressive and insulting manner. He was made to strip to his underwear (while still blindfolded) and one of the Civil Guard officers present said, “How strange, they haven’t hit you. There are no marks”. He then lowered Mohammed Fahsi’s underwear and the Civil Guard officers laughed at him and told him “nice arse” and “we’re going to have a lot of fun together”.

He was then taken to a cell in a basement area at the end of several corridors. He said he was insulted and pushed against the walls as he walked. Civil Guard officers made racist insults at him and told him, “We’ve ruined your Eid al Adha [a holy Muslim festival], haven’t we, you faggot?”. He reported that he was made to stand in the cell with his hands on the wall and back to the door while his blindfold was removed and told to remain in that position. Every time a Civil Guard officer came to the cell Mohammed Fahsi allegedly was forced to do press-ups. The cell had no toilet facilities, ventilation, water or light. It was approximately 2m by 3m square and contained a mattress and blanket. Mohammed Fahsi believes there was a camera in the cell because every time he tried to sit down a Civil Guard officer would come to the cell and make him stand again.

Mohammed Fahsi says that during his period in incommunicado detention he was not allowed to pray, wash or use toilet paper when he went to the toilet. Whenever he left the cell to go to the toilet he says he was blindfolded and he says the Civil Guard officers deliberately intimidated him, insulted and laughed at him. He says he received food once on the first day in detention and twice on the second two days. He had to eat immediately or the food would be taken away within a few minutes.

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

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

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

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

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

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

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

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

"A" says that when he was taken out of the cell to be interrogated the Civil Guard officers asked him where he had injuries and grabbed his broken finger. During the interrogations (which occurred with no lawyer present) he says he was forced to do push-ups while naked, that the officers hit him and threatened to rape his wife, and told him he would never see his children again. He says the officers insulted him personally and all Muslims, saying "You bloody Arabs, you all deserve to die". They made him insult God and the Prophet Mohammed, and to say the Lord's Prayer and "Viva Franco". He says the Civil Guard officers wanted him to incriminate the other detainees. He says that another men arrested in the same operation alleged that he was asphyxiated with a plastic bag.

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

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

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

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

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

Following their appearance before the investigating judge the detainees were remanded

into pre-trial detention. “A” and “B” were released on bail in November 2006 pending the conclusion of the judicial investigation, and “C” was released on bail in July 2006. Mohammed Fahsi is still in pre-trial detention. On 23 October 2007 the investigating judge issued an indictment (auto de procesamiento sumario) against these four men and 18 others on charges of membership of a terrorist group and collaboration with a terrorist group but no formal charges have yet been brought against Mohamed Fahsi by the public prosecutor and it is not known if or when he will stand trial.

According to lawyers acting for the detainees, allegations of ill-treatment have been made during declarations before the investigating judge, including at a bail hearing for Mohammed Fahsi and another detainee on 8 January 2007, and in written submissions to the court. Amnesty International has repeatedly written to the Minister of Interior, Attorney General, Madrid Public Prosecutor and General Council of the Judiciary calling for an investigation to be opened into these allegations. However, no such investigation has been opened.

NON-REFOULEMENT

Article 3

Amnesty International has documented several cases of the Spanish authorities forcibly returning individuals to countries where they face a real risk of being subjected to torture or other ill-treatment, in violation of the prohibition of *refoulement* enshrined in Article 3 of the Convention against Torture.

The following cases are illustrative of this concern.

BASEL GHALYOUN

Basel Ghalyoun was forcibly returned to Syria from Spain on 22 July 2008, despite the fact that there were substantial grounds for believing that he faced a real risk of torture and other ill-treatment there.

Basel Ghalyoun arrived in Spain on a student visa in 2001. He later obtained a residency and work permit and was present legally in the country when he was arrested in March 2004 connection with the bomb attack on commuter trains in Madrid.

Basel Ghalyoun was convicted by Spain's National Criminal Court in October 2007 of involvement in the attack. However, on 17 July 2008 the Supreme Court acquitted him on appeal of all charges. He left prison later that day, but was immediately told that he was under an expulsion order, and was taken into police custody to await expulsion to Syria. Basel Ghalyoun's lawyer was not given a copy of the expulsion order so was unable to submit an appeal against the order. Neither he nor Basel Ghalyoun knew of its existence until Basel Ghalyoun was taken into custody.

Basel Ghalyoun was arrested by the Syrian authorities immediately upon arrival at Damascus

International Airport on 22 July 2008. According to information available to Amnesty International as of February 2009, he has been held in incommunicado detention since then.

M.S.

M.S., an Algerian national, arrived in Spain in 1991. He was legally resident in Spain when he was arrested in February 2008 as part of a counter-terrorism operation known as “Operación Nova”.

M.S. was acquitted on appeal of all charges by the Supreme Court on 7 October 2008. However, on 15 October 2008 he was re-arrested on the basis of an expulsion procedure (No. 24.040/08) made under article 54.1 of the Foreigners Law (Ley de Extranjería) which classifies as a grave administrative offence “Participating in activities contrary to the external security of the State or which may prejudice relations of the State with other countries, or being implicated in serious activities against the public order as per Organic Law 1/1992” (this despite the fact M.S. had just been acquitted of all such charges by the Supreme Court). The following day Investigating Court Number One of Pamplona ordered the interment of M.S. in the Migration Detention Centre in Madrid.

M.S.’s lawyer appealed against the expulsion order but as of February 2009 had not received a response. Despite this, on 21 November 2008, while the appeal was pending, M.S. was removed from the Migration Detention Centre in Madrid and has not been seen or heard from by his lawyer, friends or relatives since this date. According to information received by Amnesty International, M.S. was transported to Ghazaouet (Algeria) by boat on 21 November and handed over to the Algerian authorities. However, as of February 2009 neither his family nor his lawyer have been notified (formally or otherwise) of his whereabouts.

MURAD GASAYEV

Murad Gasayev was extradited from Spain to the Russian Federation on 31 December 2008 despite the real risk that he faced torture or other ill-treatment and unfair trial.

Murad Gasayev fled to Spain in 2005. His claim for international protection in Russia was rejected on the basis of confidential information that neither Murad Gasayev nor his lawyer were ever given access to and thus they were unable to challenge.

Murad Gasayev is charged in the Russian Federation of involvement in a June 2004 attack by an armed group on government buildings in the Republic of Ingushetia. He has claimed that he was detained in Ingushetia in August 2004 by five masked law enforcement officials who took him to the central office of the Federal Security Service in Ingushetia, where he was tortured for three days and questioned about the attack. He was not charged with the attack. Instead he was taken in a van and released in farmland outside the city.

Amnesty International has received reports indicating that Murad Gasaev’s name had been mentioned by another individual who had been detained in relation to the June 2004 and allegedly subjected to torture or other ill-treatment in January 2005. Amnesty International has learned that during the trial of this individual, he retracted the statements made during interrogation by officials from an investigation unit of the Directorate of the General

Procuracy in the Southern Federal District, based in North Ossetia, as they were untrue.

The Russian non-governmental organization Memorial has researched and documented the cases of several of those convicted of crimes in connection with the June 2004 armed attack. The information it has gathered reportedly suggests that the investigations, carried out by the investigation unit of the Directorate of the General Procuracy in the Southern Federal District, were flawed; that suspects were tortured and subjected to other ill-treatment, and that their trials failed to meet international standards of fairness. Amnesty International has interviewed several people whose statements concur with these findings by Memorial.

It should be noted that the CPT has taken the extraordinary step of publishing three public statements expressing grave concerns about torture, other ill-treatment and unlawful detention by state officials in Chechnya; that investigations into cases involving allegations of ill-treatment or unlawful detention are rarely carried out in an effective manner; and that the Russian authorities have failed to react adequately to the concerns it has raised.²³

In 2007 the CPT also took the extraordinary step of publishing extracts from the report of its visit in 2006 to Chechnya, as a result of concern that its detailed recommendations had "received at most a token response and in many respects have quite simply been ignored" . The CPT works on the basis of confidentiality between itself and the state parties, and is only authorized to make public statements when a country "fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations." The fact the CPT has felt obliged to resort to a public statement three times, additionally releasing with it detailed excerpts of its report and the Russian authorities' comments, indicates that the CPT considers Russia is failing to effectively tackle torture in Chechnya.

In February 2008 the Spanish National Criminal Court approved the extradition request based on "diplomatic assurances" from the Russian public prosecutor's office that Murad Gasayev would not be sentenced to death or to life imprisonment without parole, and would be able to receive visits from the UN Committee against Torture while he was detained. Upon discovering that the Committee against Torture does not undertake regular visits to detention facilities and that Russia is not party to the Optional Protocol to the Convention against Torture, the Court then requested assurances that the CPT would be able to monitor Murad Gasayev's detention.

The CPT was not consulted about the "diplomatic assurances" given by the Russian public prosecutor until after the National Criminal Court had approved the extradition request. When it was informed of the assurances, however, the CPT stated that it was not prepared to assume the task of monitoring the detention of Murad Gasayev in Russia, as a matter of principle due to concerns over the unreliability of "diplomatic assurances".

Despite this, on 31 December the Spanish authorities extradited Murad Gasayev to Russia with the assurance that staff from the Spanish embassy in Moscow would be able to visit him in detention. In a letter to the national criminal court the Spanish Ministry of Justice stated that although there was no precedent for such action by the Spanish embassy other diplomatic missions in Moscow had undertaken similar tasks, albeit "with certain difficulties". It stated that in such cases the general practice was to visit the detainee once upon arrival in Russia and once after final sentencing.

After arrival in Russia Murad Gasayev was detained in Moscow, before being transferred to the pre-trial detention facility in Piatigorsk. To Amnesty International's knowledge as of 9 February 2009, he has received one visit from his lawyer and one visit from Spanish embassy staff. His family has not been given permission to visit him.

EXPULSIONS AND MIGRATION CONTROL MEASURES

Amnesty International is concerned that measures taken to impede the entry of undocumented persons into Spain (particularly through the southern border - Canary Islands, Ceuta and Melilla, the Andalucian coast and Balearic Islands) are also violating the prohibition of *refoulement* set out in Article 3 of the Convention against Torture.

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

According to two reviews presented by the Spanish Ministry of the Interior in 2008 and 2009 there was a significant decrease in the number of irregular immigrants who had arrived in Spain by boat compared to previous years²⁴. According to official statements, these results demonstrated the effectiveness of measures adopted to counter irregular migration, including maritime barriers financed by Spain and the EU, the participation of Frontex (the European Agency for the Management of Operational Cooperation at the External Borders), as well as "cooperation agreements" with various African countries including Morocco, Algeria, Mauritania, Senegal, Guinea Bissau, Equatorial Guinea, Mali, Cape Verde, Ghana, and the Gambia. The human cost of these measures and their impact on the human rights of migrants and refugees are not addressed in the review documents.

Amnesty International has raised concern that impeding migration and externalising border controls can prevent asylum seekers from being able to realise their right to seek asylum, as well as increasing the risk of exposure to ill-treatment in countries of transit. Increasing interceptions of migrants and asylum-seekers at sea raises particular concerns regarding the effective right to seek asylum or claim other rights to which all asylum-seekers and migrants are entitled as, in such circumstances, judicial and public oversight of the situation is highly limited.

■ In October 2005, Amnesty International received reports of human rights violations against people who had attempted to cross the fence that separates Morocco from Ceuta and Melilla, including excessive use of force by law enforcement officials, collective expulsions, and immediate and illegal expulsions that violated the prohibition of *refoulement*. Thirteen migrants and possible asylum-seekers died in these incidents. Despite repeated requests Amnesty International has been unable to obtain information from the Spanish or Moroccan authorities concerning the existence and/or outcome of investigations into these events (see the Amnesty International report *Spain and Morocco: Failure to protect the rights of migrants – one year on* (Index: EUR 41/009/2006).

The following case illustrates Amnesty International's ongoing concerns regarding the right of effective access to asylum procedures, protection against *refoulement* and conditions of detention of migrants and asylum-seekers intercepted at sea.

MARINE I CASE

On 30 January 2007, the Spanish sea rescue service intercepted a boat named *Marine I* off the coast of Mauritania, with 369 people aboard. The passengers, originating from Asia and Sub-Saharan Africa, were travelling to the Canary Islands. The Spanish rescue service assisted the boat to a position 12 miles off the coast of Mauritania. The boat remained stranded there for almost two weeks until the Mauritanian and Spanish authorities agreed on 12 February to allow the boat to land in Mauritania. Part of the agreement allowed the Spanish authorities to manage the welfare and the processing of the migrants and asylum-seekers in Mauritania. The Spanish authorities agreed to process the claims for international protection of 10 Sri Lankans on board, who were transferred to the Canary Islands along with 25 others. However, despite a positive report from UNHCR, these asylum claims were not admitted into the Spanish asylum procedure and all 10 individuals were deported on 25 March 2007.

In April 2007 it was reported that of the 369 people aboard *Marine I*, 35 had been returned to Guinea, 161 to India and 115 to Pakistan. Twenty-three people reportedly remained in a hangar in Mauritania under the effective control of Spanish authorities in conditions of detention that did not comply with Spanish law. On 18 May, the 23 were transferred to a detention centre under Mauritanian jurisdiction, and in June 2007, 17 of them were returned to Pakistan. The remaining six were transferred to Melilla, Spain, to receive psychological treatment due to their experience in custody.

For further information, see the Amnesty International reports:

- *Spain and Morocco: Failure to protect the rights of migrants – one year on* (Index: EUR 41/009/2006). October 2006.
- *Mauritania: "Nobody wants to have anything to do with us"* (Index: AFR 38/005/2008). July 2008.

INADEQUATE MEASURES AGAINST GENDER-BASED VIOLENCE

Articles 2, 12 and 16

According to government figures the number of women killed by their partner or former partner was 58 women in 2005, 68 in 2006, and 71 women in the year 2007.²⁵ In 2008 the officially acknowledged figure was 70 deaths, with seven more cases under investigation; this is the highest figure since 1999.²⁶ In 2008 an official report on the profile of those who were killed revealed that 30 per cent of the victims had made at least one complaint to police about the man who finally killed her.²⁷

Amnesty International considers that the Basic Law 1/2004 on Comprehensive Protection Measures to Tackle Gender-Based Violence (*Ley Orgánica de Medidas de Protección Integral contra la Violencia de Género*, Law 1/2004)²⁸ was an important step in improving the institutional response to gender-based violence in Spain. However, the organization is concerned about the non-implementation of some of the rights guaranteed by Law 1/2004, which continues to leave many women at risk of such violence. The organization is particularly concerned by the lack of due diligence in investigating and prosecuting acts of gender-based violence, as well as in protecting women at serious risk.

MIGRANT WOMEN

Amnesty International is particularly concerned about the additional obstacles that irregular migrant women face in accessing justice and specialized services, which puts them at particular risk of gender-based violence and killings. According to official statistics, the death rate of victims per million is much higher for foreign nationals than for Spaniards: over the last nine years (1999-2007) the average yearly death rate of women was 2.05 per million for Spaniards and 13.18 per million for foreign nationals.²⁹

Amnesty International expressed concern that in 2005 the Ministry of the Interior issued Instruction 14/2005 to law enforcement officials, ordering them to investigate the migration status of foreign national women who report ill-treatment with the aim of beginning expulsion proceedings if a woman is found to be an irregular migrant. The organization is concerned that as a consequence of the implementation of this instruction women who are irregular migrants may decide not to seek help from the law enforcement agencies even when their life is at risk, out of fear of being deported.

DUE DILIGENCE IN INVESTIGATION AND PROSECUTION

Since 1999 gender-based domestic violence has been a crime which can be prosecuted *ex officio* in Spain. However, Amnesty International considers that this legal reform contrasts

with a lack of diligence in investigating and prosecuting such crimes. Thus the reality is that, notwithstanding the law, victims of gender-based violence continue to bare responsibility for making complaints and providing evidence.

PROTECTION MEASURES FOR WOMEN AT RISK

Amnesty International is also concerned at the high rate of refusal of judicial protection measures for victims in situations of serious risk to life. According to official information of 112,081 protection orders requested in the last three years 26,424 were denied.³⁰ More than 25 per cent of women murdered by their partner or former partner in 2007 had not been supported by the public prosecutor when they had requested protection measures against their aggressor. In these cases, the public prosecutor had advised the court against granting the protection measure requested.

Amnesty International is also concerned at the ineffectiveness of some of the judicial protection measures granted. According to official information³¹ at least 10 of the women killed in 2008 had a judicial protection measure in force.

The following case of Sylvina Bassani highlights the lack of action on behalf of the judiciary and the prosecution, despite the law.

SYLVINA BASSANI

Sylvina Bassani was killed by her estranged husband on 10 April 2008. In September 2006 she had told a court that she feared for her life as he had repeatedly threatened to kill her, and a restraining order was issued against him. He repeatedly breached this order but no action was taken against him. Sylvina Bassani made 28 further requests to the court for protection and investigation measures between September 2006 and April 2008, all of which went unanswered or were refused. Six days after Sylvina Bassani's death her lawyer received a letter from the court responding to her requests, some of them a year old, and stating that the Public Prosecutor had dropped its case against her husband.

RIGHT TO REDRESS

Amnesty International has noted with concern that Law 1/2004 does not contain specific provisions which guarantee the right of victims of gender-based violence to reparation and there has been no subsequent legislation addressing this gap. While the "Law on aid for victims of Violent Crimes and Against Sexual Freedom" (*Ley de Ayudas a Víctimas de delitos violentos y contra la libertad sexual*)³² could be a means for a victim of gender-based violence to claim some forms of reparation, Amnesty International considers that the requirements established under the law are difficult for victims of gender-based violence to meet. Furthermore, under this law, compensation is awarded only to victims who can demonstrate that they suffered serious physical injuries; compensation is not available under this law for the effects of psychological violence.

For further information see the Amnesty International reports:

■ *Mas riesgos y menos protección: Mujeres inmigrantes en España frente a la violencia de género.* November 2007. (Available in Spanish only).

■ *Obstinada realidad, derechos pendientes: Tres años de la Ley de Medidas de Protección contra la Violencia de Género.* July 2008. (Available in Spanish only).

ENFORCED DISAPPEARANCES

Articles 2, 12 and 16

Amnesty International is concerned that the Spanish government is failing to comply with its international obligations regarding the right to reparation for victims of gross human rights violations by failing to ensure there is an effective judicial enquiry into the enforced disappearances committed during the Civil War and Franco dictatorship. In its concluding observations on Spain's fifth periodic report, the UN Human Rights Committee expressed concern in October 2008 at the continued application of the 1977 Amnesty Law, noting that amnesties for serious human rights violations are incompatible with international human rights law and reminded the Spanish authorities that crimes against humanity cannot be subject to any statute of limitations. The Committee also expressed concern at obstacles faced by victims and their relatives in obtaining obtain justice, truth and reparation.

In October 2008, an investigating judge of the National Criminal Court instigated an investigation into an estimated 114,266 enforced disappearances that occurred during the civil war and early years of the Franco dictatorship. The Public Prosecutor appealed against the opening of the investigation, calling for the application of the 1977 Amnesty Law which granted amnesty for all crimes with a political connection committed up to 1977. He also stated that the statute of limitations for the alleged crimes had expired. On 2 December, the National Criminal Court said that it was not competent to investigate crimes of this type and the investigation was closed. However investigating judge Baltasar Garzón ruled that local courts were competent to investigate such crimes when they had been committed in their territorial jurisdiction and on 26 December 2008, he sent information to a number of local courts on suspected cases of enforced disappearances and the illegal removal of 30,960 children from their families for further investigation.

For further information about Amnesty International's concerns regarding enforced disappearances please see the following Amnesty International reports:

■ *España: La obligación de investigar los crímenes del pasado y garantizar los derechos de las víctimas de desaparición forzada durante la Guerra Civil y el franquismo.* November 2008. (Available in Spanish only).

■ *España: Ejercer la jurisdicción universal para acabar con la impunidad.* October 2008.

(Available in Spanish only).

1 Full name withheld to protect privacy.

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

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

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

5 CPT/Inf/E(2002)1-Rev.2006 citing CPT 2nd General Report [CPT/Inf (92) 3] , para. 38.

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

7 Full name withheld to protect privacy

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

9 See, for example, Preliminary Observations of the HRC: Peru, UN Doc. CCPR/C/79/Add.67, paras17, 25 July 1996.

10 Code of Criminal Procedure, article 509.2.

11 Interview with Amnesty International, 15 June 2008.

12 Interview with Amnesty International, 16 July 2008.

13 Under Spanish legislation, no detainee (including those not held incommunicado) has access to a lawyer in private before making their statement to the police. Amnesty International believes that this legislation must be reviewed urgently.

14 Brennan v. the United Kingdom (00039846/98), 16 October2001, Para 58.

15 Para 63, ibid.

16 Interview with Amnesty International, 16 October 2008.

17 Interview with Amnesty International, 9 July 2008.

18 Constitutional Court Sentence 199/2003 of 10 November 2003.

19 See for example Supreme Court Appeal Sentence 927/2006, 4 October 2006.

20 Interview with Amnesty International, 11 July 2008.

21 See for example CAT/C/CR/29/3 (23 December 2002), para.14(b); Report of the Visit of the CPT to Spain from 1 to 12 April 1991, para.57, Report of the Visit of the CPT to Spain from 22 November to 4 December 1998 para.26, Report of the Visit of the CPT to Spain from 22 to 26 July 2001 para.9, and Report of Visit of the CPT to Spain from 22 July to 1 August 2003 para.25.

22 B. Morentin, et al., A follow-up investigation on the quality of medical documents from examinations of Basque incommunicado detainees, Forensic Sci. Int. (2008), doi: 10.1016/j.forsciint.2008.10.002.

23 Public statement concerning the Chechen Republic [CPT/Inf (2007) 17]; Public statement concerning the Chechen Republic [CPT/Inf (2003) 33]; Public statement concerning the Chechen Republic [CPT/Inf (2001) 15];

24 Balance de la Lucha contra la Inmigración Ilegal 2008, 2009.

25 Instituto de la Mujer del Gobierno de España: http://www.mtas.es/mujer/mujeres/cifras/violencia/muertes_tablas.htm (6 April 2008).

26 Ministerio de Igualdad. Víctimas mortales por violencia de género, datos provisionales, 2 de enero de 2009 .

27 "Informe sobre muertes violentas en el ámbito de violencia domestica y de genero en el año 2007",

Servicio de Inspección del Consejo General del Poder Judicial, 2008, p. 32.

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

29 Instituto de la Mujer del Gobierno de España: http://www.mtas.es/mujer/mujeres/cifras/violencia/muertes_tablas.htm (6 April 2008).

30 Datos estadísticos judiciales en aplicación de la Ley Orgánica 1/2004, de medidas de protección integral contra la violencia de género. Resumen de los tres primeros años de aplicación, Consejo General del Poder Judicial, Noviembre 2008, p.

7.

31 Ministerio de Igualdad Víctimas Mortales por violencia de género, datos provisionales, 2 de enero de 2009.

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