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SPAIN

Crisis of identity

Race-related Torture and Ill-treatment by State Agents

PREFACE

A family of Roma, including children, are humiliated and tortured in a Madrid police station, where they have been illegally detained. Police abduct a Senegalese street vendor from a Galician beach and, instead of taking him directly to a police station, beat him up in a remote area of the city, allegedly using racist abuse. A Moroccan child, who has tried to make his life in Melilla, is illegally abandoned by Spanish police at a frontier area from which he is too weak to return. A Brazilian woman is raped while in custody, but, confronted with the refusal of police officers to cooperate in the investigation, the rapist cannot be identified and the Supreme Court appears powerless to act. A Moroccan worker, under attack from an armed mob, flees his home under a hail of rubber bullets, fired by police who do nothing to stop the burning of his home or the looting of his possessions. The principal trumpeter of the Barcelona Symphony Orchestra, an African American US citizen, claims he has been beaten so badly by police officers that he has to miss his concert engagements.

The above incidents are just some of the race-related cases which have come to Amnesty International's attention in recent years and which, however different in detail, suggest a pattern of violation by law enforcement officers of the rights of members of ethnic minorities or persons of non-Spanish origin. Often such violations appear to arise as a direct result of a deliberate policy of "racial profiling".¹ Sometimes, as in the case of the expulsion of Moroccan children from Ceuta and Melilla (see section B.5.), they occur with the sanction of the government authorities.

Amnesty International (AI) has, for many years, expressed concern about the torture and ill-treatment both of Spanish and foreign nationals by public officials. This report examines the specific issue of race-related torture or ill-treatment by public officials in Spain during a seven-year period between 1995 and the beginning of 2002. The report refers both to cases which originated in that period and to those which were judicially resolved in that time. However, most of the cases are recent. The vast bulk of cases involve ill-treatment, or alleged ill-treatment by police officers (National Police, Local or Municipal Police and autonomous police forces such as the Basque autonomous police, the *Ertzaintza*, and the Catalan autonomous police, the *Mossos d'Esquadra*). The report does not examine conditions in point of entry holding facilities,

¹Originally a U.S. term, this describes unfair treatment by law enforcement officials, including stops and searches, on the basis of race or ethnic origin.

detention centres and reception centres, nor yet the situation of foreigners in Spanish prisons. These merit separate examination.

The content is based on information gathered by AI, both directly from victims or their lawyers, other individuals or other non-governmental organizations (NGOs). An AI delegation visited the Basque Country, Cataluña, Galicia, Andalucía, the Community of Madrid and the Autonomous City of Ceuta. AI consulted lawyers, individual foreign nationals, either undocumented or legally resident in Spain, church representatives, police officers, government officials, union members, journalists and representatives of non-governmental organizations concerned with human rights and/or immigrants. Information was also sought from government authorities and from national and regional ombudsman offices in Spain.²

As regards the individual cases described in the report, it should be noted that these have been chosen for illustrative purposes - to reflect the nature, rather than the scale, of the problem. The specific cases described in the report are only a small sample of the allegations received - very small when compared, for example, to a 1999 report by the Basque Ombudsman's office which studied 47 allegations of police ill-treatment of immigrants and foreign nationals in just one year in one area of one city in one region of Spain. Equally, the number of individual cases per region does not necessarily reflect the extent of the problems in that region; there may be a larger number of reports in one region for purely incidental reasons or because information has been easier to obtain there than in some others.

It should be emphasised from the outset that, although this report focuses on ill-treatment by public officials, AI is well aware of the compassion, courage and generosity shown by some public officials, who have at the same time been placed under considerable personal stress by the nature of their work. Police officers and Civil Guards also face daily hazards. Grave dangers are inherent in their work. However, there are many cases in which public officials continue, for a variety of reasons, to benefit from impunity and AI is deeply concerned about the harassment and persecution of some officers who have tried to defend human rights (see section D). In recent years AI is one among several international and national organizations to have reported a disturbing rise in the number of allegations it has received about race-related ill-treatment by public officials.

The problem of torture and other ill-treatment is compounded by the problem of the effective impunity that may be enjoyed by public officials. While it should be stressed that courts have sometimes punished illegal detention and ill-treatment severely, there are far too many

²NGOs or unions consulted include *Medicos sin Fronteras* (MSF), the *Federación de Asociaciones de SOS-Racismo*, the *Asociación Pro Derechos Humanos* (APDH) in Madrid and representatives of the regional branches of *Asociación Pro Derechos Humanos de Andalucía*, the *Asociación contra la Tortura* (ACT), the Romani association *Gao Lacho Drom*, the *Asociación de Trabajadores e Inmigrantes Marroquies en España* (ATIME), the *Comisiones Obreras* - CCOO), the *Federación de Mujeres Progresistas*, various branches of the *Asociación de Ayuda al Inmigrante*, such as *Algeciras Acoge* and *Almería Acoge*, the *Cruz Roja* (Red Cross) and the Melilla-based children's rights organization, *Asociación Pro Derechos de la Infancia* (PRODEIN).

cases in which this does not occur and little use appears so far to have been made by the courts of a new article of the Penal Code which punishes with particular severity crimes related to race and sex (see section A.2). AI also fears that in many, and perhaps most cases, undocumented immigrants, living in the hope of receiving work and residence permits, are afraid to lodge complaints with the police or courts. AI has received some serious allegations of ill-treatment, which are then, through fear of the consequences of publicity - and sometimes on the basis of legal advice - withdrawn.

This report attempts to examine some of the concerns regarding torture and other ill-treatment which bear directly on the immigrant or ethnic minority population in Spain, and proposes a series of recommendations.³

³Refugee and asylum issues are the subject of separate reports by the Spanish Section of AI, e.g. "*El asilo en España: Una carrera de obstáculos*", ("Asylum in Spain: An Obstacle Race"), September 2001, Spanish Section of AI

BACKGROUND

Racial discrimination against the Roma community in Spain is the legacy of centuries of persecution, but it has taken the recent influx of immigrants to Spain, in particular from the African continent, to bring about a general recognition that racism and xenophobia are at least as serious a problem in Spain as elsewhere in Europe.

Discrimination against certain groups heightens their vulnerability to torture and other ill-treatment by state agents. The increase in the number of reported cases of ill-treatment of foreign nationals has risen with the increase in the numbers of immigrants arriving in Spain. AI believes that, as in patterns of policing monitored by the organization in many other countries, in Spain ethnicity and race may be seen by law enforcement officers as indicators of criminality; and in Spain, as elsewhere, black people and other ethnic minorities are routinely detained on suspicion of offences such as drug dealing or not having identity documents in order. Allegations of race-related ill-treatment are rarely investigated effectively.

The growth in the immigrant population in Spain has risen steadily over the last 20 years, making Spain one of the key entry points in the European Union for immigrants, mainly from Africa and South America, but also increasingly from Asia - particularly China - as well as Eastern Europe. Out of a total population of over 39 million, between two and a half and three per cent are non-nationals. According to figures provided by the Interior Ministry the number of foreigners resident in Spain rose from 198,042 in 1981 to 938,783 in 2000. The figure rose again to 1,109,060 in 2001, an increase of 23.81 per cent compared to one of 11.78 per cent in 2000. Added to this is the number - officially unquantifiable - of undocumented immigrants. The number given by Spanish NGOs stands at about 200,000. Of these about 39 per cent are given as Moroccan, about 25 per cent as South American, about 12 per cent as coming from sub-Saharan Africa, about eight per cent as Chinese and about eight per cent as East Europeans.⁴

Undocumented immigrants - who include many women and children - find themselves in a particularly vulnerable position in relation to state agents. Spanish police officers appear to regard skin colour and facial characteristics, or other differences of appearance, as a legitimate reason for stopping individuals and asking for their identity papers and it is in these circumstances that a large number of cases of ill-treatment arise. Women of foreign origin, particularly from South America or North Africa, may, in addition, be suspected by police of being sex workers. There are concerns that "street children" from North Africa, notably in the Spanish North African enclaves of Ceuta and Melilla, have not received adequate protection from the Spanish authorities. The increasingly large numbers of North Africans and sub-Saharan Africans who have made the clandestine and dangerous sea crossings to Andalucía and the Canary Islands in recent years may face a lack of basic humanitarian care after arriving on the

⁴Percentages provided by Immigration Ministry (*Delegación del Gobierno para la Inmigración y Extranjería*)

beaches, or may be held in inhuman and degrading conditions in detention facilities.⁵ Allegations of ill-treatment have also arisen in respect of reception centres for immigrants, where the length of time applications for work and residence may take, and the consequent uncertainty as to whether they will be successful, can build and nourish a climate of tension.

In recent years racist attacks have been on the increase. To mention only a few of the most striking examples, in July 1999 there were attacks on Moroccans in Ca n'Anglada, Terrassa (Catalunya). Also in July 1999, in Girona (Catalunya), three Gambian women were injured when petrol bombs were thrown at their home and a mosque was burned during racist disturbances. The three days of racist riots in parts of Almería (Andalucía) in February 2000 were described at the time as being among the worst in Europe and the "worst incident of mass racist violence in the southern European Members States [of the EU], but not the only one"⁵. In October 2000 there were racist disturbances in Las Palmas (Canarias). According to the annual report for 2000 published by the European Monitoring Centre on Racism and Xenophobia (EUMC) of the EU, the 55 neo-Nazi or skinhead ultra-rightist groups known to be active in Spain had more than quadrupled since 1995, from 2,300 members to 10,400. According to the report, the real number could be twice as many and the number of racist websites has been proliferating.

The number of people arrested for racist crimes or offences has risen steadily since 1996.⁶ One of the most recent examples is the disturbing case of the Ecuadorian national, Wilson

⁵The closing of the frontier between Morocco and Ceuta in the early 1990s, by the building of a high border fence, displaced large numbers of undocumented African seeking entry to Spain and Europe to the Moroccan and Spanish beaches. The bodies of drowned immigrants on Spanish beaches became an increasingly frequent sight. A growing humanitarian crisis was brought to the attention of the Spanish public in 2000 by several concerned NGOs. During a September 2000 exploratory mission to Tarifa (Cádiz) MSF was dismayed at the extent of the crisis that it found, with pitifully few resources to assist and provide medical care for those arriving on the beaches and suffering from hypothermia, dehydration, physical exhaustion, fractures, cut feet, sprained ankles and burns (from the effect of a mingling of salt water and petrol). North Africans, mainly Moroccans, appeared to fare worse than other migrants in the sense that, if caught, they were often immediately escorted back to Morocco on ferries, without receiving any medical attention and still in their wet clothes. Detention facilities for foreigners, such as Fuenteventura Airport in the Canary Islands, have also been severely criticised by NGOs such as MSF, Human Rights Watch (HRW) and the Spanish Ombudsman.

⁶2000 Annual Report of new European information network on racism and xenophobia, EUMR.

⁶According to Spanish government figures quoted in *El Telegrama*, Melilla, 19 people, all in Cataluña, were arrested for racist crimes in 1996. In 1997 there were 24 (13 in Cataluña, six in Madrid and five in Melilla). In 1998 the figure rose to 31 (17 in Cataluña, four in Andalucía, four in Aragón, three in Valencia, two in Madrid and one in Rioja). In 1999 the number almost tripled. Out of 89 suspects for racist crimes 50 were from Cataluña, 14 in Navarra, nine in Valencia, six in Andalucía, five in Canarias, two in Extremadura, two in Madrid and one in Murcia. In 2000 114 people were arrested

Pacheco Torres, who was severely beaten and thrown into the sea, where he drowned, after being refused entry to a night club in January 2002. There were allegations that night clubs in the area consistently refused entry to foreigners and that the killing of Wilson Pacheco had been racially motivated.

The Spanish government is aware of Spain's changing role with regard to immigrants. During discussions in 2000 with the United Nations Committee on the Elimination of Racial Discrimination (CERD), it stated: "Spain's new role as a host country for immigrants ha[s] called for a change in attitudes on the part of Spanish society which [i]s generally in favour of the social integration of immigrants, condemning discriminatory acts that had taken place and demanding the adoption of appropriate preventive and remedial measures".⁷ In its last report to the Committee on the Elimination of Racial Discrimination (CERD), the Spanish government identified two general sources of racism and xenophobia in Spain: the "skinhead" movement, based mainly in the big cities, and a "more spontaneous" phenomenon, linked to labour issues, of racism against immigrants and Roma.⁸ According to an opinion poll by the *Centro de Investigaciones Sociológicas* (CIS), published in January 2002, a small majority of Spanish citizens - 53.5 per cent - believe that Spanish society is intolerant of the customs of members of ethnic minorities or foreign nationals - an increase of five per cent over a similar poll taken in 2000.

Fears about the impact of foreigners on Spanish society and identity are reflected in the racially-motivated attacks that have erupted in recent years in various parts of Spain, such as those of February 2000, which affected parts of Almería (Andalucía), and captured international attention. In the area of the Campo de Dalías, which includes the agricultural town of El Ejido, much of the Spanish population reportedly resented what they perceived as the common but erroneous view held by the outside world that sweated North African labour was alone responsible for generating the considerable wealth of the area, and blamed the foreign workers for high levels of crime. In Almería capital, residents opposed the opening of a Moroccan consulate partly owing to fear that it would bring insecurity to the area. The doors of the future consulate were, at one point in May 2001, sealed up with silicon and, at the final opening, the

and the figures for Andalucía and Cataluña are reversed (54 in Andalucía, 13 in Cataluña, 12 in Madrid, 12 in Valencia, 10 in Castilla-La Mancha, nine in Murcia and two in Aragón and Castilla-León).

⁷Para 16 - CERD, March 2000 summary record. Further discussion of the CERD is to be found in section A.1.

⁸"*En términos generales y aun a riesgo de simplificar, se puede decir que son dos las fuentes generadoras de racismo y xenofobia en España: una de carácter estable, ligada al movimiento skinhead, localizada principalmente en las grandes ciudades, y otra, más espontánea, relacionada con el surgimiento de algún problema social or laboral, que adquiere tintes racistas en la medida en que se ven envueltos inmigrantes o gitanos, problemas que, en muchos casos, están siempre generados o vinculados a cuestiones de trabajo*" (CERD/C/338/Add.6, 12 October 1998).

Moroccan consul was insulted and assaulted and forced to enter with a police bodyguard. A judge described the complaints made to him about the consulate as purely xenophobic and racist, and also severely criticised the political authorities for attempting to sidestep the issue by locating the consulate elsewhere. The Ombudsman for Andalucía called on Spain's various public administrations to combat a growing phenomenon of exclusion and racism.⁹

It is important, however, to stress that racist attitudes stretch way beyond the influence and actions of skinhead or other neo-fascist groups, or to Spanish residents in areas increasingly dependent on, or resentful of, immigrant labour. For instance, a number of racist and xenophobic statements have recently been made by public figures, including politicians. In August 2001 about 2000 immigrants, many undocumented, and the majority North African, gathered in the small town of Las Pedroñeras, near Cuenca (Castilla-La Mancha) for the annual olive harvest. The arrival of large numbers of immigrants - reported to be living in wretched conditions during the olive-picking season, owing to the lack of appropriate facilities - generated tension in the area. On 14 August Domingo Triguero, a regional deputy of the ruling Popular Party (PP), publicly warned against an "invasion" of immigrants, whom he referred to by the still common pejorative term of "*moros*" (Moors/Arabs) or "*morillos*" (little Moors). An investigation, ordered by the Attorney General, into racist activities in Canarias, threw the spotlight onto reported remarks made in October 2000 by Francisco Rivero, owner of a television channel in Canarias, who was quoted as saying: "The blacks bring in drugs and trash ... the Spanish government has no balls. We will get rid of these people, even if we have to stone them".¹⁰

In February 2000 a Socialist deputy, Rafael Centeno, admitted that he had made statements, recorded on TV, such as "the Moors [are for] Morocco, which is where they belong." He subsequently resigned his seat. In April 2001 the chief prosecutor of the Court of Alicante submitted to the court a complaint lodged by the Romani association Alicante Kali, alleging that the mayor of Pego, Carlos Pascual, had made racist remarks against Roma, stating that they were thieves. In October 2001 the president of the Generalitat (government) of Cataluña, Jordi Pujol, reportedly warned that immigrants who did not integrate into Catalan society and speak Catalan (rather than Castilian Spanish) should be treated with "zero tolerance". In January 2001 the *Diputado del Común*, the Ombudsman for the Canary Islands, said that the islands were being "invaded" by immigrants from Africa and America, generating the "most serious problem in the whole archipelago".¹¹

⁹"*Es muy triste, pero existe un fenómeno creciente de exclusión y, en muchos casos, no en todos, de racismo, simple y llanamente ...*" In an interview to Europa Press Television, 18 November 2001

¹⁰"*Los negros vienen a traer drogas y basura, los políticos son unos acojonados y el Gobierno español no tiene huevos. Vamos a echar de aquí a esa gente, aunque sea a la pedrá!*" (Quoted in *El País*, 27 October 2000)

¹¹"*Las declaraciones de Manuel Alcaide, Diputado del Común ... en las que advertía que las islas 'están siendo invadidas' por inmigrantes de África y América, generando con ello 'el*

There is a common perception, fostered in part by Spanish government representatives, that the rise in immigrant numbers accounts for the rise in crime. In June 2001 a disproportionate number of foreigners - 43 per cent, excluding Cataluña - were reported to be held in provisional detention in Spain. Most were suspected of committing petty crimes, or drug offences.¹² According to Spanish Interior Minister Mariano Rajoy, 40 per cent of detainees in Spain in 2001 were foreigners, and 50 per cent of those responsible for crimes of robbery using force and intimidation were immigrants. According to figures released by the commander of the *Policía de Cataluña* 59 per cent of those detained by police in Barcelona in 2001 were said to be immigrants - a number reaching 72 per cent in the Ciutat Vella, where the immigrant population is about 20 per cent of the total. In January 2002 the Spanish Interior Minister attributed to the influx of immigrants a reported rise of 9.35 per cent in the number of crimes and offences committed in the first six months of 2001 as compared to 2000.

In February 2002, Mikel Azurmendi, the newly-appointed president of the *Foro para la Integración Social de la Inmigración* (Immigration Forum), a body founded by the Spanish government to liaise and consult with immigrant NGOs, reportedly caused consternation by describing multiculturalism as a “gangrene” of democratic society. He disputed the widespread view that the violence at El Ejido in February 2000 had been racist in origin. The Immigration Minister stepped into the subsequent debate, reportedly agreeing that multiculturalism was an “unacceptable concept”. He explained that he understood it to describe a tolerance of cultural practices that were alien to democratic values or violations of human rights.¹³ However, the minister added that he supported a “multi-racial” and “multi-ethnic” society.

International bodies have viewed with concern reports about racist attitudes on the part of state agents, such as police officers and Civil Guards (see section A.1., under “International Standards”). Some Spanish institutions and NGOs have also expressed concern about race and immigrant issues. A large proportion of the investigations or actions recently undertaken by the office of the *Defensor del Pueblo*, the Spanish Ombudsman, related to immigrant complaints, including expulsions in disputed circumstances, ill-treatment in detention centres of foreigners

problema más grave de todo el archipiélago’, han sido reprobadas desde caso todos los ámbitos políticos y sociales de las islas” (El País, 18 January 2002).

¹²Almost 20 per cent of convicted prisoners were foreign. It is likely that poverty and destitution accounts for much of the petty crime committed by foreign prisoners. However, in Spain an undocumented immigrant cannot be expelled if he or she faces judicial proceedings. One reason given for the high number of foreign prisoners was advice reportedly given to them by immigrant-smuggling mafias, according to which to commit a crime is a safe way of remaining in Spain.

¹³“*El multiculturalismo es una gangrene de la sociedad democrática*” - Mikel Azurmendi, quoted in *El País*, 19 and 23 February 2002. “*No a las sociedades multiculturales, porque sostienen valores que tienen que entrar en conflicto*”, Enrique Fernández-Miranda, Immigration Minister, quoted in *El País*, 23 February 2002.

and excessive use of force by police officers and others. The annual reports for 1999 and 2000, presented to the two chambers of Parliament, the *Cortes Generales*, in October 2000 and 2001, showed the extent to which the institution had become involved in issues and problems connected with immigration.

The *Federación de Asociaciones de SOS-Racismo*, the Barcelona-based NGO, observed a “substantial increase” in racist attacks in 2000, not only by individuals, including neo-Nazi groups, but by public officials. It also noted an increase in attacks on immigrant property, houses, shops and places of worship. Its last annual report documented 22 cases of convictions for, or allegations of, race-related assaults or abuse of authority by law enforcement officers in 2000 (excluding the riots at El Ejido in February 2000) and a similar, slightly higher number in 1999.

Another prominent NGO, the *Asociación contra la Tortura* (ACT), founded in 1985, has documented since then a steady increase in cases of torture and ill-treatment by police officers, Civil Guards and prison guards. In a report published in 2000 and covering cases of torture and ill-treatment in 1996, 1997 and 1998, ACT stated that it was involved in 150 cases suits against public officials (National Police, Civil Guards and prison guards) and noted over 2,000 complaints of torture or ill-treatment between 1992 and 1998 (of which 346 in 1998, compared to 167 in 1992 - an increase of about 20 per cent, with National Police and Civil Guards the main targets of complaints). ACT stated that the real figures would be higher because most cases concerned undocumented immigrants and persons detained for minor crimes who were too afraid to file complaints. ACT’s report for 1998 - the last available - documented at least nine cases of ill-treatment of persons of foreign origin by National Police, autonomous police or Civil Guards.

Racist language may be contained in some police documents. For instance, a recent order given to Local Police in Las Palmas de Gran Canaria (Canarias) ordered officers to carry out identity checks at night on all homeless people, whether “local” or “coloured” (“*de color*”). The order was subsequently revoked as being racist and xenophobic. Racism among police officers in Spain is acknowledged by some officers themselves,¹⁴ and AI understands that no officers of the National Police (*Cuerpo Nacional de Policía*), which is responsible for the registration of foreigners and immigrants, are of African, South American or Moroccan origin. Public officials generally deny behaving in a racially motivated way, although even some police officers have accused others of racist behaviour. Where police officers are specifically accused by their victims of combining physical ill-treatment with racist abuse (using common pejorative

¹⁴The *Sindactó Unificado de Policía* (SUP), the United Police Union, which complained to the Spanish Ombudsman about the expulsion, under sedation, of 103 immigrants in 1996, stated that SUP members had been criticised by some racist police officers, who had used such phrases as “the blacks are good food for sharks” (“*los negros son buenos alimentos para los tiburones*”). The SUP has, however, also criticised police critics in high profile cases such as those of Rita Margarita Rogerio and António Fonseca Mendes, described later in this report, and believe that the number of racist officers is very small. Police officers have also themselves been the target of racism (SOS-Racismo cites the case of a Romani police officer in its *Informe Anual 2000*).

phrases such as “*Negro de mierda*” [“Black scum/shit”] or “*Moro*”), it is often, of course, extremely difficult to substantiate such allegations, unless they are heard by witnesses who are prepared to testify. Even where police abuse is very likely, through a combination of circumstances, to be racially motivated, courts may find difficulty accepting or receiving evidence for this, despite a new article of the Penal Code which considers racism to be an aggravating factor in a crime (see under section A.2. on “Spanish law”).

In its last report of 1998 to the CERD, about which further details are given in subsequent sections of this report, the Spanish government referred to positive changes in the Penal Code, whereby racism had become an aggravating factor in a crime. At the same time, however, it also stated that it was very difficult for courts to detect racial discrimination as a factor in crimes because statements made directly after these had occurred, or allegedly occurred, were generally recorded as “*lesiones*” (injuries) and not as racial discrimination.¹⁵

Nevertheless, even where racial abuse or motivation cannot be proved in law, or has never been seen as a specific ingredient of a case, that case may be described as *race-related* if the identity or origin of an individual is a central factor in their interception or arrest by public officials. A large number of cases described in this report have arisen out of incidents originating in identity checks on individuals whose skin colour or features have suggested to law enforcement officers that they could be guilty of an offence or crime, such as possession of, or dealing in, drugs. These individuals may then face verbal abuse and physical ill-treatment or humiliation as well as many difficulties in bringing a complaint, or seeing it through the judicial procedure. Again, this report describes some cases where women of foreign origin have been raped, or allegedly raped and sexually assaulted, in police stations or Civil Guard barracks. They have not necessarily been raped or sexually

assaulted because of racial hostility, but because their racial origins have placed them in a particularly vulnerable situation, in which they are more likely than other women to be stopped by police and taken to police stations, or come into contact with Civil Guard officers.

¹⁵“*En lo que atañe a las decisiones de órganos judiciales respecto a casos de discriminación racial, ha de destacarse a priori una gran dificultad en orden a detectar las mismas, originada por el hecho de que en la mayoría de los casos, el atestado realizado a raíz de un hecho delictivo ha sido registrado bajo la figura delictiva de lesiones pero no bajo la de discriminación racial*”. Spanish government to CERD, CERD/C/338, Add.6, 12 October 1998.

A. RACISM, DISCRIMINATION AND THE LAW

A.1. International standards

The right to enjoy human rights without discrimination is one of the fundamental principles underlying international human rights law. This principle appears in virtually every major human rights instrument as well as in the United Nations Charter. The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) all prohibit discrimination on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The International Convention on the Elimination of All Forms of Racial Discrimination (Convention against Racial Discrimination), adopted by the United Nations General Assembly on 21 December 1965, is the principal UN treaty dealing with discrimination on grounds of race. It defines racial discrimination as: “Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms, in the political, economic, social, cultural or any other field of public life”.

States which are Party to the Convention commit to a series of specific steps to prohibit and eliminate racial discrimination and to guarantee the right of everyone, regardless of race, colour, descent or national or ethnic origin, to equality before the law and to the enjoyment of their civil, political, economic, social and cultural rights. The protection of these rights under the Convention extends to non-nationals, and its provisions have been applied to address racial discrimination in asylum procedures and discriminatory patterns of arrest and detention of non-nationals. The Convention obliges states not only to end discrimination by government officials, but to protect people against racial discrimination and violence at the hands of private individuals, groups or institutions.¹⁶

The Committee on the Elimination of Racial Discrimination (CERD) monitors compliance with the Convention by reviewing periodic reports submitted by states parties and hearing complaints from individuals or groups claiming that their rights under the Convention have been violated.¹⁷

¹⁶International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (b)

¹⁷Individual complaints may only be submitted if the State concerned has agreed to this procedure by making a declaration under Article 14 of the Convention. Spain has made such a declaration, though with the reservation that complaints must be submitted within three months following the exhaustion of domestic remedies. No individual complaints concerning Spain have been submitted to CERD, which has called on Spain to review its reservation. See Concluding Observations by the Committee on the Elimination of Racial Discrimination: Spain 19/04/2000 (CERD/C/304/Add.95).

The Convention against Racial Discrimination was one of the first international human rights instruments to be ratified by Spain, coming into effect on 4 January 1969. Since that time Spain has submitted 15 periodic reports to the CERD, the fourteenth and fifteenth being presented together and considered by the Committee in March 2000.

In its Concluding Observations on Spain in 1996, CERD expressed concern about the “increasing manifestation of racism, xenophobia and discrimination against foreigners, asylum-seekers and members of the Gypsy community”. The Committee “noted with serious concern that evidence of racist attitudes on the part of members of the police and the Civil Guard seems to be increasing, and that the number of convictions resulting from such incidents does not seem to increase proportionately”.¹⁸

Continuing concern about “reports of racist attitudes on the part of the police and Civil Guard officers” was expressed by the Committee when examining Spain’s fourteenth and fifteenth reports in March 2000.¹⁹ CERD noted the lack of adequate information on statistics of allegations of racially-motivated and related offences, their investigation and the punishment of those responsible. Recalling that it had previously expressed concern about reports of racist attitudes on the part of the police and Civil Guard officers, CERD wished to know what evaluation Spain had made of the effectiveness of non-discrimination training schemes for these officers. Among other concerns, it commented on the “remarkably few cases before national courts [which] have been identified as incidents of racial discrimination, despite a recognized general increase in juvenile violence, including attacks on foreigners by extremist groups, neo-Nazi movements and gangs”.

At the same session, in March 2000, CERD also expressed concern about incidents of violence against persons of Moroccan nationality in El Ejido (Almería) in 2000 and was “further concerned about reports that the underlying socio-economic problems which provoked these events are also found in other regions of the country”. The Committee recommended that Spain take measures to resolve the underlying causes of tension and unrest, “not merely on an emergency basis, but as part of a long-term strategy to combat racial discrimination and violence ...”

Spain is also party to other international human rights treaties of particular relevance to race-related discrimination and ill-treatment, including the ICCPR, the ICESCR, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The bodies established to monitor compliance with these treaties have repeatedly made observations and recommendations regarding the prevention of racism and race-related ill-treatment in Spain.

¹⁸CERD/C/304/Add.8, 28 March 1996, Concluding observations/Comments

¹⁹CERD/C/304/Add.95, 19 April, 2000, Concluding observations/Comments

For example, in 1997 the UN Committee against Torture (CAT), when examining Spain's third periodic report on implementation of the Convention against Torture, referred not only to the fact that the complaints of acts of torture and ill-treatment which it received were frequent, but that it had "also received information of many cases of ill-treatment which appear to constitute manifestations of racial discrimination".²⁰ The Committee on the Elimination of Discrimination against Women has also voiced concern that foreign women workers, asylum seekers and women living clandestinely in Spain lacked adequate protection from violence and abuse.²¹ The Committee on the Rights of the Child has drawn attention to the treatment of foreign unaccompanied minors and recommended measures to guarantee their rights under the Convention on the Rights of the Child.²² The Human Rights Committee and the Committee on Economic, Social and Cultural Rights, which monitor states' implementation of the two International Covenants, have also called for penal, preventive and educational measures to combat racism against foreigners in Spain.²³

Spain is also party to the European Convention on Human Rights and Fundamental Freedoms (ECHR), Article 14 of which states that the exercise of rights under the Convention must be guaranteed "without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, birth or other status". Article 3 of the ECHR prohibits torture and other inhuman or degrading treatment. The European Commission on Human Rights has held that race discrimination may itself constitute degrading treatment under this article.²⁴

A freestanding prohibition of discrimination is established in Protocol 12 to the ECHR, which, unlike Article 14, is not limited to discrimination in respect of the rights in the Convention. The Protocol provides that the enjoyment of any right set forth by law must be secured without discrimination on any ground, such as race, sex, colour, or any of the other grounds already referred to in Article 14. Protocol 12, also requires that no one shall be discriminated against on any ground by any public authority. An important new tool for achieving legal protection against racial discrimination under the ECHR, Protocol 12 opened for signature and ratification in

²⁰Concluding Observations of the Committee against Torture: Spain, 27/11/97, A/53/44, para 130.

²¹Concluding Observations of the Committee on the Elimination of Discrimination against Women: Spain 01/07/99. A/54/38 para 274.

²²Concluding Observations of the Committee on the Rights of the Child: Spain 24/10/94 (CRC/C/15/Add.28).

²³Concluding Observations of the Human Rights Committee, Spain 03/04/96 (CCPR/C/79/Add.61, para 16); Concluding Observations of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.2, paras 10 and 17).

²⁴*East African Asians v the United Kingdom*, 14 December 1973, Appl. Nos. 4403/70 et al, reproduced in 3 European Human Rights Reports 76..

November 2000 and will come into force when ten states have ratified it. Spain has not yet done so.²⁵

Other standards and mechanisms adopted by the Council of Europe to combat racial discrimination include the Framework Convention for the Protection of National Minorities²⁶, the European Social Charter, which guarantees non-discrimination on grounds such as race in the enjoyment of economic and social rights, and the establishment of the European Commission against Racism and Intolerance (ECRI) whose mandate is to combat racism, xenophobia, anti-Semitism and intolerance at a pan-European level. ECRI's 1999 report on Spain found that, while "violent racism" was not widespread, racist incidents were a daily occurrence, in particular against the Romani population, black people and people of North African or Arab origin. Anti-semitic attitudes were also evident. ECRI concluded that close attention should be paid to the problem created by the marginalisation of immigrants, in particular Africans; the rapid and integral application of new articles of the Penal Code to improve the protection offered by law; the methods aimed at combating the activities of extreme right networks in Spain and abroad; and the need to improve, and achieve, a better precision in the statistics on vulnerable groups and racist acts. ECRI also recommended the creation of a special body to combat racism and intolerance, and that the Spanish authorities clarify and reinforce the powers of the Ombudsman in that particular field.

As president of the European Union (EU) from January to June 2002, Spain has an important role to play in ensuring compliance with the EU norms regarding racial discrimination. Article 13 of the Treaty on European Union empowers EU states to "take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation". A Directive to combat racial discrimination was adopted by the EU in June 2000 and a further directive on discrimination in employment was adopted in November 2000. Article 21(1) of the Charter of Fundamental rights, adopted in 2000, also prohibits discrimination based on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The annual report of the EU-established European Monitoring Centre on Racism and Xenophobia (EUMC) for 2000 remarked that: "Roma, immigrants, refugees and asylum-seekers are experiencing discrimination and social exclusion. Undocumented migrants are especially vulnerable since they are often victims of ill-treatment and brutality by the police and are liable to deportation".

Spain is also party to key international and regional instruments aimed at the prevention of torture and ill-treatment. The Convention against Torture, ratified by Spain in 1987, defines

²⁵Only one state, Georgia, had ratified Protocol 12 as of February 2002.

²⁶Pursuant to Article 25 of the Convention, Spain submitted a report to the Committee of Ministers of the Council of Europe in December 2000, addressing the situation of the Roma population in Spain.

torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.²⁷ The Convention obliges states parties to take effective measures to prevent torture, including ensuring that all acts of torture are offences under criminal law and that all allegations of torture are promptly and impartially investigated, and redress provided to the victims.

At the regional level, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which Spain ratified in 1989, establishes a Committee mandated to undertake on-site visits to any place of detention or deprivation of liberty by a public authority. The Committee for the Prevention of Torture (CPT) visited Spain in 1997, following allegations of the ill-treatment of foreigners during deportation,²⁸ and again in 1998. The CPT’s report of its 1998 visit made detailed recommendations to the Spanish government regarding detention safeguards and the diligent investigation of allegations of torture and ill-treatment.²⁹

A.2. Spanish law

Article 10.2 of the Spanish Constitution of 1978 provides for conformity of Spanish norms on fundamental rights and freedoms with the UDHR and the relevant international treaties and agreements that Spain has ratified. According to Article 13, foreigners in Spain enjoy the same rights and freedoms guaranteed by the Constitution to Spanish citizens (except for the right to take part in public affairs). Article 14 states that Spanish citizens are equal in law and establishes the principle of total non-discrimination on grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.³⁰ In addition, a sentence of the Constitutional

²⁷Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1 (1).

²⁸CPT/Inf(98) 9.

²⁹Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 November to 4 December 1998.

³⁰ Article 10.1: “*La dignidad de la persona, los derechos inviolables que le son inherentes, el libre desarrollo de la personalidad, el respeto a la ley y a los derechos de los demás son fundamento del orden político y de la paz social*”.

Article 10. 2. “*Las normas relativas a los derechos fundamentales y a las libertades que la Constitución reconoce se interpretarán de conformidad con la Declaración Universal de Derechos Humanos y los Tratados y Acuerdos Internacionales sobre las mismas materias ratificados por*

Court (no.214/1991) stated that the principles of freedom of opinion or expression did not authorise anyone to make racist or xenophobic declarations.

A number of articles of the Penal Code punish racial discrimination or racial hatred. The new Penal Code, which entered into force on 26 May 1996, recognizes a number of offences against the exercise of fundamental rights and public freedoms, involving the provocation of discrimination, hatred or violence on racist grounds. In the light of subsequent arguments about the constitutionality of the most recent law on foreigners (see below), it should also be mentioned, that Article 542 of the Penal Code punishes with up to four years' disqualification from public service (*inhabilitación especial*) the authority or public official who, knowingly, prevents any individual from exercising their civil rights as recognised by the Constitution and the laws.

A potentially extremely important addition to the new Penal Code is Article 22.4, which, in combination with Article 66.3, sets out as an aggravating factor in a crime, punishable with comparative severity, one that is motivated by racist or other discriminatory motives.³¹ However, the Spanish government informed the CERD in its last report (see above), that courts of law found it difficult to detect cases of racial discrimination because statements made to police or courts were more likely to be classified under the heading of, for example "*lesiones*" (injuries). No public official appears yet to have been sentenced in connection with this article. One example of the difficulties involved in applying the new law is provided by the case of Mamadou Kane (see under B.4.), where racist abuse by police had been alleged - and ill-treatment and illegal detention already established. The prosecutor argued before the Supreme Court that the aggravating circumstance (*agravante*) of racial motive should be taken into account as intrinsic to the crime. He argued that the fact that the officers had taken Mamadou Kane to an outlying area and beaten him there was related to his status as a foreign immigrant. The officers supposed that he would not file a complaint, "owing to the sense of insecurity that immigrants

España".

Article 13: "*Los extranjeros gozarán en España de las libertades públicas que garantiza el presente Título en los términos que establezcan los tratados y la ley*".

Article 14: "*Los españoles son iguales ante la ley, sin que pueda prevalecer discriminación alguna por razón de nacimiento, raza, sexo, religión, opinión or cualquier otra condición o circunstancia personal o social*."

³¹ "*Son circunstancias agravantes ...Cometer el delito por motivos racistas, antisemitas u otra clase de discriminación referente a la ideología, religión, o creencias de la víctima, la etnia, raza o nación a la que pertenezca, su sexo u orientación sexual, o la enfermedad o minusvalía que padezca*".

The first court sentence reportedly applying Art. 22.4 of the Penal Code was one passed by the Court of Zaragoza in January 2001, when two youths were sentenced to four years' imprisonment and one year and three months' imprisonment respectively for threatening and stabbing two students in April 1997.

generally have with respect to their possible expulsion from the country”. The officers also relied on the likelihood that the court would accept their word above that of a black immigrant’s. The court, however, did not accept the prosecutor’s argument.

Despite the legal guarantees offered by the Constitution and the Penal Code, and the ratification by Spain of all international instruments on racism, certain recent laws, or parts of these laws, and certain legal decisions have militated against them.

More specifically, AI remains concerned about aspects of the Organic Law 8/2000 of 22 December, (commonly known as the *Ley de Extranjería*, or Aliens Law), which revised Organic Law 4/2000 of 11 January, and deals with the rights and freedoms of foreigners in Spain and their social integration. The Spanish government had informed the CERD, in the last report submitted to the UN body, that *all* foreigners, independently of their administrative situation, were equal before the law and enjoyed virtually all rights enjoyed by Spanish citizens, including rights to freedom of movement, freedom of speech and freedom of assembly and association. With the latest revision of the Aliens Law, this is now simply not true. In a letter of 28 March 2001 to Immigration Minister Enrique Fernández-Miranda, the Spanish Section of AI drew attention to a number of concerns. In particular, it expressed concern about articles of the law which recognized the rights to assemble, associate, demonstrate, organise in unions and strike only in respect of those foreigners who had already obtained residence and work permits. In other words, it did not expressly forbid these rights to undocumented foreign nationals, but left them, or the associations representing them, without the protection of the law.

Given the concerns expressed by AI, and by many other groups, with respect to the restrictive aspects of the law, the organisation was dismayed about reports of a speech by the Immigration Minister in October 2001. According to these the minister stated that, in view of the attacks on New York and Washington on 11 September 2001, such restrictions had clearly been justified.³²

Apart from the above-mentioned law, a Constitutional Court judgment, dated 29 January 2001, ruled that skin colour or other foreign appearance could be used as a criterion for deciding when police officers could carry out identity checks, thereby heightening concerns that individual police practice, involving racial discrimination, had been converted into a constitutional doctrine. The importance of this decision cannot be under-estimated, given that, in AI’s experience, the majority of cases of race-related ill-treatment in Spain stem from incidents arising from identity checks, where individuals may be the victims of “racial profiling”.

Rosalind Lecraft Williams, a conference organizer who is black, had lived in Spain since her marriage 33 years before, and, like her husband and their son, was a Spanish national. On 6 December 1992 the family arrived at Valladaolid railway station on a short holiday. As they left the train a National Police inspector approached Rosalind Williams and asked for her papers. The officer did not, however, ask her husband and son for theirs. When questioned about the reason for the identity check the officer reportedly admitted that he had been ordered to “identify people *like her*” (“*identificar a gente como ella*”). She, her husband, Federico

³²See, for instance, *El Mundo*, 23 October 2001.

Agustín Calabuig-Paris, and her son, Iván Agustín Calabuig Williams, having refused to reveal their identity, were taken to the police station, where an identity check was carried out. The family appealed to the Constitutional Court against a decision of the Interior Ministry (February 1994) and subsequent judgment of the National Court (November 1996), according to which the police officer had not acted improperly. Their appeal was based on Article 14 of the Spanish Constitution, forbidding racial discrimination. However, the court's majority verdict found that police checks on foreigners in Spain did not constitute racial discrimination and, moreover, that "specific physical or ethnic characteristics can be taken into consideration (...) as reasonable indicators of the non-national origin of the person who possesses them".³³

The court considered that the use by police officers of skin colour as a criterion for determining who should be asked for their papers was "merely indicative of a greater probability that the person involved was not Spanish". It added that the moment and place at which an identity check was made, such as railway stations, and other places of transit, lodgings used by foreigners or areas inhabited by a number of foreigners, had a bearing on whether it was logical for public officials to carry out identity checks, and specifically referred to the fact that, by these means, police officers in Valladolid had found 126 foreigners living in an illegal situation in 1992. Such checks were lawful and, as long as they were carried out with respect and courtesy - the court held that Rosalind Williams had not been treated disrespectfully or humiliated - could not be seen as racially discriminatory. However, one of the six judges, Julio Diego González Campos, disagreed. In a separate judgment, he argued that to introduce race as a criterion for selecting who should be subjected to police identity checks was an infringement of Article 14 of the Constitution. He criticized his colleagues for disregarding social realities and the fact that, in a multiracial society such as Spain now was, to repeatedly subject to identity checks people of foreign origin who lived there, on the basis of racial origin alone, both affected the personal dignity of the individual and frustrated integration into Spanish society.

Apart from specifically race-related legislation, torture is punished under Articles 173-177 of the Penal Code, incurring a maximum of six years' imprisonment if committed by a public official, together with expulsion from the service. The definition of torture in Article 174 contains similar wording to that of Article 1 of the Convention against Torture, although the purposes are defined more narrowly and exclusively, with no reference to torture "by reason of discrimination of any kind".³⁴ Sexual assault, covered by Articles 178-

³³ "...determinadas características físicas o étnicas pueden ser tomadas en consideración (...) como razonablemente indiciarias del origen no nacional de la persona que las reúne".

³⁴"A public authority or official commits torture if, by abuse of his office and for the purpose of obtaining a confession or information from any person or of punishing him for any act he has committed or is suspected of having committed, he subjects that person to conditions or procedures which, by their nature, duration or other circumstances, cause him physical or mental suffering, entail the suppression or diminution of his faculties of conscience, discernment or decision-making, or in

180, is punished with prison sentences ranging between one and 15 years, depending on the nature of the assault. (Sexual assault with violence or intimidation, but without oral or anal penetration or introduction of objects, is punished by between one and four years' imprisonment). There is no specific reference to sexual assault by public officials under these articles of the Code, although Article 180 punishes with between four and 10 years' imprisonment a sexual assault committed with violence or intimidation on someone who is vulnerable by reason of age, disability or *situation*.

Reference to the laws which regulate the forms in which arrests of Spanish nationals and foreigners are made, and which seek to protect the rights of those arrested and detained, are given under section B.3.

A.3. Training of police officers and Civil Guards

Apart from international and national norms, the different police forces and the Civil Guards are governed, in principle, by internal ethical codes of conduct, or deontological codes. For instance, the deontological code of the *Ertzaintza* obliges officers to show "absolute political neutrality and impartiality" and to avoid any abusive or arbitrary practices. Similar codes apply to all police forces. In October 2001 the Spanish Section of AI published a study of the training courses in human rights which are available to the National Police, the Civil Guard and prison officers. The study concluded that the subjects of immigration and asylum were generally not studied at recruitment level and that both National Police and Civil Guards required more thorough training in issues of racism and xenophobia. Training in general in human rights issues, in use of arms and in refusal to obey illegal orders was also still inadequate.³⁵

any other way infringe his moral integrity".

³⁵ "La formación en derechos humanos de los cuerpos de seguridad y funcionarios de prisiones en España: Una asignatura pendiente", ("Human Rights Training for Security Forces and Prison Guards in Spain: A Still Pending Subject") Amnistía Internacional, Sección Española, October 2001

B. RACE-RELATED TORTURE AND ILL-TREATMENT

AI is concerned about the large number of deaths in custody in Spain, including the deaths of foreign nationals. It believes that a number of investigations have fallen short of requirements established in international standards concerning thoroughness, promptness and impartiality of investigations. These standards include the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which also cover deaths in custody, and Article 12 of the UN Convention against Torture.

B.1. Deaths in custody

According to an ACT report, at least 28 people died in police or Civil Guard custody between January 1999 and the publication date of October 2000. Of these 12 were shot. Eight were found hanged in their cells; two fell to their deaths after being arrested. One was allegedly beaten to death, and the deaths of several others were reportedly also linked to beatings.³⁶

AI has information about some, but by no means all of these cases. Some foreigners, immigrants, or members of ethnic minorities, are included in this list and a number of others have died before and since while in the custody of state agents. Although the inclusion of non-nationals or members of ethnic minorities in such a list does not in itself indicate any degree of racial motivation, some of the persons involved had been stopped in identity checks, which appear to have been based on racial profiling. The deaths were accompanied by serious allegations of ill-treatment or excessive use of force. In some cases the investigations into the

³⁶The list compiled by the ACT includes: Moisés Esperanza (shot on 13 January 1999); Armando S.E., (fell, while handcuffed, from a bridge on 17 January 1999); Luis V.P., (shot on 4 March 1999); Miriam Gómez, (a passenger in a car, shot from behind, during a chase on 10 April 1999); Iván H.G., (whose death, on 23 May 1999, is reported to have been linked to a beating, as well as to drugs and alcohol); José Antonio C.G., (found hanged on 6 July 1999 after going voluntarily to a police station to report a theft); Albino Fernández (shot on 18 July 1999); Juan Martínez (fell into a coma after allegedly being severely beaten on 20 September 1999, but whose death was officially ascribed to a fall and to illness); Desiré B.F. (shot dead in disputed circumstances on 4 December 1999); Juan Carlos Sanz (shot dead on 21 January 2000 in a case of mistaken identity); Juan António B.A. (found dead in a police station on 24 March 2000); Miguel Angel Cebreiro (found dead in a police station on 26 March 2000, in a case allegedly linked to ill-treatment); António Cordero (found dead in a police station on 12 May 2000); António Fonseca (died in disputed circumstances, reportedly after being severely beaten, on 12 May 2000 - see also below); Ardian R (shot dead while fleeing from police on 4 June 2000); José Díaz (shot dead on 20 July 2000) and Joaquín M. Mateo (shot dead on 7 September 2000). Source: *ACT and El Mundo, 1 October 2000*.

deaths do not appear to have been full or thorough. Two, so far unclarified, deaths recently occurred in the same Civil Guard barracks in Ceuta.³⁷

As stated above, international standards require a thorough, prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed, and in all suspected cases of extra-legal, arbitrary and summary executions, including deaths in custody, where complaints by relatives or reliable reports suggest that unnatural death may have occurred. Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that: “Every State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”. Principle 9 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions provide that “There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death ...” Principle 10 provides that the investigative authority shall have the power to obtain all the information necessary to the inquiry. Principle 11 provides that, where the established investigative procedures are inadequate, because of lack of expertise or impartiality or the importance of the matter or if there are complaints from the family of the victim about inadequate investigative procedures, or other substantial reasons “Governments shall pursue investigations through an independent commission of inquiry”. The members of such a commission shall be chosen for their recognised impartiality, competence and independence as individuals.

In addition, given that, as in some other countries in Western Europe, prosecutors in Spain often appear reluctant to prosecute cases of alleged human rights violations involving police officers, it should be stressed that the Guidelines on the Role of Prosecutors, adopted by

³⁷On the stormy night of 2 December 1998 a 24-year-old Nigerian woman called Julienne Danielle was found hanged in a Civil Guard cell in Ceuta. Julienne Danielle was seven months pregnant. She had travelled thousands of kilometres to reach the perimeter fence marking the boundary between Morocco and Ceuta. The Civil Guards who found her took her to the Insalud hospital, where injuries to her feet were treated. She was subsequently taken to the Civil Guard barracks, questioned and placed in a cell. Queries were later made as to why she had been held overnight in a Civil Guard cell rather than allowed to remain in the hospital or taken directly to the immigrant camp of Calamocarro, which still functioned at that time. The Director General of the Civil Guard stated that she was not being held as a detainee but for practical and humanitarian reasons. She had not been locked in the cell. It had not been possible to take her directly to the camp, owing to the violence of the rainstorm. An inconclusive internal investigation into the death was undertaken by the Civil Guard, but the five immigrants being held at the time were reportedly not questioned and the failure to trace or question crucial witnesses cast doubt on the thoroughness of the inquiry. On 22 November 2000 a French resident of Moroccan origin, Mustafa Hajjaj, was found hanged in the same Civil Guard barracks. A judicial investigation was opened. The family joined the inquiry as a civil party, reportedly stating that they did not believe he had committed suicide, as claimed by the Spanish government representative in Ceuta.

consensus at the Eighth UN Congress on Prevention of Crime and Treatment of Offenders, 7 September 1990, require prosecutors to act objectively, fairly and expeditiously and to uphold human rights. (“*Prosecutors shall give ‘due attention’ to prosecuting human rights violations by public officials*”).

B.1.1. Death in disputed circumstances: the case of António Fonseca

AI is concerned about a number of issues surrounding the disputed circumstances of the death in custody of António Augusto Fonseca Mendes, a native of Guinea-Bissau, in Arrecife, Lanzarote (Canarias) on 20 May 2000. António Fonseca, whose death caused much unrest in the immigrant community in the Canary Islands, and had widespread political repercussions in Spain, lived in Madrid and had a valid residence permit. He was married and had a child. At the time he was on holiday in Arrecife, where his sister lived.

He was first approached outside his sister’s house, in the early hours of the morning, by two National Police officers, who suspected he was in possession of drugs. He managed momentarily to escape arrest and was pursued through the streets before being handcuffed, placed either in the back seat or the boot of the patrol car and then dragged into the police station. At some point after arrival at the station, still under restraint, and in the passageway leading to the cells, he lapsed into unconsciousness and died. According to police testimony, which denied that truncheons had been used at any point while he was in custody, ingestion of a packet of heroin had caused his death.

The police version was challenged by the Fonseca family, who had taken photographs of his body at the mortuary, and who joined proceedings as a civil party. The photographs appeared to show external injuries, including injuries to the face. Relatives said there were numerous haematoma on the body and blood on his clothes, fingers and shoes. They expressed fears that he had been ill-treated and died of asphyxiation. Red Cross volunteers were called at about 2.50am. A doctor from the emergency services, who preceded the arrival of the first forensic doctor, and tried to resuscitate António Fonseca, later expressed surprise to have found that the young man’s body was lying on the floor in a poorly lit corridor. By the light of a torch he could not see if the body showed any signs of injury, although he noted haematomas on the face, and reportedly added that injuries may have been more difficult to see because of the black skin. Those police officers present could not give him any information. The two officers who had carried out the arrest and dragged the Guinean into the station had left the station at about this time to be tended at a clinic for minor injuries.

A first post-mortem examination found no signs of significant external injury and reportedly attributed death to an accumulation of fluid on the lungs, brought on by stress. (According to a revised police version of the death, António Fonseca had died not from ingestion of drugs but had suffered a heart attack related to a pulmonary oedema). However, a second autopsy, conducted by Prof. Dr. José António García-Andrade, an eminent professor of forensic medicine, noted a number of contusions, haematomas and grazes on the body, which he noted to be of athletic and healthy constitution, and an injury of “special significance” to the

sternocleidomastoid muscle on the right side of the neck. The professor ruled out sudden death by natural causes or by drugs and was certain that death had been caused by inhibition of breathing following a “blow with a blunt instrument”.³⁸ He noted that the first autopsy report contained a number of errors. A separate toxicological report by representatives of the National Institute of Toxicology, did not find any trace of drugs in the blood and viscera of the victim, thus contradicting police claims that he had died after ingesting a packet of drugs in his possession.

Figure 1 António Fonseca in football strip [private]

Following news of the results of the second autopsy, judicial sources were quoted as saying that the first autopsy had not specifically excluded the possibility of death by a blow, despite finding evidence of fluid on the lungs. According to a third revised police version of cause of death, given by the *Dirección General de la Policía* (DGP) in a press release dated 23 August 2000, António Fonseca had struck a car mirror and fallen while being pursued by police. This statement had not been made earlier and was contradicted by two residents who had witnessed the pursuit from a balcony, and who claimed that it was, in fact, one of the officers who had struck the mirror of an Opel Astra during a struggle with the Guinean, in which they were trying to drag him into the back seat of the patrol car.³⁹

In August 2000 the police commissioner at Arrecife suddenly accused the victim’s family of “manipulation” of the body when in the mortuary. The possibility of manipulation was categorically discounted by Prof. Dr. García-Andrade, who maintained that all the injuries he had seen on the body had been inflicted in life. The allegation was later modified by the commissioner, who explained he was referring to manipulation of photographs, not the body

³⁸According to the professor, death was by inhibition of breathing: “*a) Antecedente de traumatismo o estimulación de una zona reflexogena en el presente caso, golpe dado con un objeto contundente, a nivel del nucleo carotídeo en el lado derecho del cuello, con lesión contusiva en el músculo esternocleidomastoideo; b) Evolución rápida inhibitoria de la circulación y la respiración*” He continued: “*En definitiva y como CONCLUSION, puede establecerse que el fallecimiento de D. Antonio Augusto Fonseca se corresponde con una muerte traumática secundaria al golpe recibido a nivel del núcleo carotídeo del lado derecho del cuello. El resto de las lesiones traumáticas se corresponden con golpes que no inciden en la causa de la muerte y que pueden entenderse con lesiones de contención, reducción y caída que forman parte de la constelación de la violencia de los hechos*”.

³⁹The witnesses reportedly stated that, during the struggle, the “black man” tried to talk with his sister on his mobile phone, but the officers would not allow him to, and were holding on to his arms. He managed to break free. When one of the officers grabbed him again, he pushed him and the officer fell on to the car mirror. The officers then followed him in the patrol car. The witnesses heard his shouts but could not tell if he had been placed in the back seat or in the car boot. His sister asserted that she had seen him, from her house, being bundled into the boot.

itself. Further attempts were made to question the good character of the Fonseca family.⁴⁰ At the same time the state prosecutor opened disciplinary procedures against the Fonseca family's lawyer, who was suspected of revealing to the press the results of the second autopsy examination. In addition, the application the lawyer made to the court, requesting that the police officers who carried out the arrest be detained, was rejected. The state prosecutor also declined to request that the officers be detained or that disciplinary measures be taken against them. The court ordered a new expert opinion from a forensic doctor attached to the court of Las Palmas de Gran Canaria, who was asked to examine and arbitrate between the two contradictory autopsy reports. The doctor, who was unable to examine the body, which had by then been returned to Guinea-Bissau, concluded that there were shortcomings in both autopsy reports and that the Guinean may have died a "natural death", although she was apparently unable to rule out the possibility of violence. In September 2000, the Interior Minister told Congress that there was no evidence that António Fonseca had been ill-treated by police officers and no disciplinary action would be taken against them. He later told the Justice and Interior Committee (*Comisión de Justicia e Interior*) of the Spanish Parliament that he was satisfied that António Fonseca had arrived at the police station at 2.45am and died five minutes later after a sudden collapse. AI expressed concern that the Interior Minister should make public statements while the judicial investigation was still underway and while many serious and fundamental questions about the death had yet to be explained.

The investigation into the death by Court No.1 of Lanzarote was, indeed, riddled with lapses and contradictions: contradictions in autopsy findings; contradictions between police testimony and that of eye-witnesses, or alleged eye-witnesses; crucial contradictions relating to timing; alleged tampering with police station records, such as the book of telephone messages; the failure to note the time of arrival at the police station; the reported failure of a judge or other judicial officer to inspect the body at the scene, in person, before its removal by police (*levantamiento del cadaver*), as required by law; the apparent uselessness of most of the photographs taken by a police officer assigned to take photographs during the second post-mortem examination, and which showed virtually everything but details of the body. There were also contradictions between different police statements. For example, the two officers who arrested António Fonseca reportedly told the investigating judge that they had not taken him directly to the hospital because he was in good health when he arrived at the police station, while an Arrecife police press statement issued the day after the Guinean's death stated that he had shown clear signs of being unwell on arrival at the station and had immediately fallen into a state

⁴⁰In the same police press release that claimed that the Guinean had struck a car mirror, and that this injury may have led to his death, the DGP added that António Fonseca had criminal antecedents and had been arrested in Bilbao in October 1999 for possession of drugs and had tried to escape from, and resist, police arrest. This account was denied by the Basque autonomous police, the Ertzaintza, who stated that they had no record that António Fonseca had been arrested in connection with a drugs offence, but that he had been involved in a fight.

of semi-consciousness. There was also an apparent contradiction between allegations that António Fonseca had fiercely resisted arrest and that he had opposed only “passive resistance”, which would explain why he was being dragged into the station, and not walking⁴¹. The time of entry into the police station of António Fonseca was not registered because the police officers had apparently forgotten to do so, and the exact time of his death was also disputed, being given variously as 2am (time recorded in a death certificate in the registry office), as 2.45am, as 2.50am (Interior Minister) and as subsequent to 3.30am (the death certificate issued by the emergency doctor recording it as 3.41am).

Information about other potential witnesses being held at the police station at time of death (there were up to 15, including some Spanish nationals and several immigrants who had just arrived on the Canary Island beaches in small boats) - was also not forthcoming to the family, and it remained unclear whether these or any others who had made statements to police or lawyers had been questioned either by the prosecutor or the investigating judge. The evidence of one potential key witness, Juan José Hormiga López, who had been arrested for theft, and who gave an extraordinarily detailed account of the lethal beating of António Fonseca, which he claimed he had seen from his basement cell, was later discounted by the investigating judge. This was reportedly on the basis of evidence (such as records of telephone messages) that he had been arrested at 6am and not over four hours earlier, as Juan José Hormiga had insisted, and therefore could not have been present in the station at the time. It was not clear whether another witness, Julio Martín de León, who corroborated the earlier time of Juan José Hormiga’s arrest, and who stated that the latter had told him only hours later how he had seen the fatal beating, had been examined.

In addition, there were allegations that the judge and the police had been involved in informal discussion about evidence in the case while the judicial investigation was still open. The sister of António Fonseca, Amalia Fonseca, claimed that she was harassed and threatened by police officers after the family’s judicial complaint was lodged.

On 30 March the investigating judge closed the case without bringing any charges against the police officers. After closure of the investigation it remained unclear whether ill-treatment had occurred at any point between arrest and death. The judge cast doubt on the adequacy of the autopsies and underlined the unreliability of the main witness presented by the Fonseca family. On the other hand, the judge appeared to place much credence on the forensic opinion of a doctor who had not even examined the body and who could not arrive at a definite conclusion about cause of death. The oddly, and repeatedly contradictory, behaviour of the police remained unaccounted for and a number of other questions were also unresolved.

The Fonseca family appealed for amendment or quashing of the judge’s decision and for the case to go to trial. No appeal has yet been granted.

⁴¹One or several police officers, asked why António Fonseca had been dragged into the police station, were reported as telling an internal police inquiry conducted on behalf of the Interior Ministry, that it was “habitual for members of the African community to offer passive resistance” (“*habitual entre los miembros de la comunidad africana ofrecer resistencia pasiva ...*” - *El País*, 3 September 2000, “*Una noche cargada de dudas en Arrecife*”)

AI is seriously concerned that the death of António Fonseca has not been investigated with the thoroughness or impartiality it requires. It is concerned that, as stated above, many important questions remain unresolved, including the cause of death, and that the general handling of the case (by judicial authorities, politicians and police officers) raises grave doubts about the authorities' compliance with international standards protecting the right to life and physical integrity and providing that any possible perpetrators of fundamental human rights violations are brought to justice. An integral part of these guarantees is the requirement that thorough investigations into controversial deaths of people in the custody of public officials take place, so that measures can be taken to prevent further occurrences. AI therefore believes that the Fonseca case should be re-opened for further investigation, both to ensure that further, crucial light is thrown onto the specific circumstances surrounding his death, and to ensure that preventive measures can be taken to prevent such deaths in future.⁴²

Among a number of other cases of deaths in custody currently under investigation by AI are the following:

Ignacio Jiménez Hernandez

Ignacio Jiménez Hernandez, a 28-year-old Rom with a chronic asthmatic condition, died in hospital in 1999 after slipping into an asthma-related coma following arrest by Municipal Police in Vitoria-Gasteiz (Basque Country) on 31 July 1999. The circumstances of his arrest were disputed, but he was arrested after an incident involving numerous Municipal Police officers, carrying truncheons in their hands, and five young men, who were drinking at the U2 bar. The officers had been called to the bar after receiving reports of problems with some customers there. Ignacio Jiménez, reportedly in a highly agitated state, struggled with police officers. He was thrown to the ground and handcuffed. He began to suffer a severe asthma attack and asked for his Ventoline spray. This was administered. His heart stopped and he was given artificial respiration by officers. He was taken, under police custody, to the Santiago Apostol Hospital, where he lapsed into a coma. According to some press reports, Ignacio Jiménez had been beaten by police during arrest, and the beating had induced the asthmatic attack. The autopsy report referred to a graze (*erosión*) extending from the left shoulder to the left nipple. A judicial investigation was closed on 17 May 2000. It concluded that Ignacio Jiménez had not been physically assaulted by police officers. However, the Romani organization *Gao Lacho Drom*, which was concerned at the time about a perceived pattern of police harassment of Roma in the area - including assaults (B.4.1), continued to believe that the main motivation for police intervention had been the fact that Ignacio Jiménez was a Rom and that disproportionate force had been used during the struggle between him and the officers. The case was re-opened in October 2000.

⁴²It should be noted that, since the death of António Fonseca, there have been other deaths in custody of foreign nationals, such as that of Essa Marong (see below).

Youssef R.

A 20-year-old Moroccan, Youssef R., died on 8 August 2001, in the hospital at Ceuta, one and a half hours after force was used to detain him by National Police officers for alleged theft at the frontier area of El Tarajal. After a difficult arrest, during which Youssef R. allegedly threatened the officers with a pair of scissors, and tried to flee back across the frontier to Morocco, he was handcuffed and taken to the police station. He received first aid before being taken to hospital. The Spanish government representative in Ceuta stated that it had been necessary to use force to handcuff the Moroccan but that there had been no ill-treatment. He was reported to say that Youssef R. had begun vomiting a few minutes after entering the police station. An autopsy, carried out on 10 August, reportedly established that Youssef R. had died of asphyxiation. Contusions were found on the face and a rib was broken. A toxicological text was also carried out. No further details are known at time of writing.

Essa Marong

A Lérida/Lleida (Cataluña) court opened an investigation into the death in custody, on 2 December 2001, of a 40-year-old Gambian national. Essa Marong was born in Baddibu in the North Bank Division and was married with four children. He reportedly died 24 hours after being arrested and subjected to restraint measures, including a gag, by *Mossos d'Esquadra* officers, who suspected him of a drug trafficking offence. According to an official explanation for the death, Essa Marong had ingested a bag of cocaine, which had burst in his stomach. Relatives and friends were concerned that, on the contrary, his death might be linked with ill-treatment. An autopsy report referred to a massive internal haemorrhage. The Gambia Association also reportedly referred to the existence of multiple fractures, but no further details about this are known by AI at present.

The death of Essa Marong sparked anti-racist protests from Gambians and other West Africans in Spain. According to a Gambian press report friends or relatives of Essa Marong were planning to lodge a judicial complaint with the courts. The Gambia Association in Spain has also called on the Gambian government to help establish the cause of his death.

B.2. Rape and sexual assault by police and Civil Guards

Figure 1 Rita Rogerio [*Iñaki Andres, El Mundo*]

AI is concerned about the number of reports of rape or other sexual abuse in police custody, and that undocumented foreign women are particularly vulnerable to such abuse. It is also concerned that police procedures in terms of the registration, custody and transfer of detainees, and supervision in police stations or detention centres, are deficient and facilitate sexual abuse; that lawyers and doctors may be impeded from confidential interviews with their clients or patients, who are inhibited by the presence or proximity of police officers, and that judicial proceedings involving such cases are often unduly protracted and subject to delay.

Rape is a crime of violence, aggression and domination, which affects women disproportionately, and is therefore an act of violence against women. Rape causes severe physical or mental suffering, is a deliberate act by the perpetrator and is carried out with the intention to intimidate, degrade or humiliate the victim. International and regional human rights bodies have ruled that rape by officials always amounts to torture, and cannot be considered a “personal” or “private” act, and therefore a common criminal act.

Legal definitions of rape vary between different legal systems and there is no universally accepted international legal definition. The International Criminal Tribunal for Rwanda, in the *Akayesu* judgment, defines rape as: “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive”. A description of what constitutes rape is also given by the International Criminal Tribunal for the former Yugoslavia in the *Furundzija* case. There is a series of decisions or declarations that support the argument that rape of women detainees by officials always constitute torture.⁴³

AI holds states responsible when they fail to take measures to protect the fundamental rights of women. States have a duty under international law to take positive measures to prohibit and prevent rape and to respond to instances of rape, regardless of where it takes place and whether the perpetrator is an agent of the state, a violent husband, or a total stranger.

⁴³ In the *Furundzija* case the Tribunal found that the following may be accepted as the objective elements of rape: “(i) the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator, or (b) the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or threat of force against the victim or a third person”. Decisions on rape as torture are provided, for example, by the Report to the UN Commission of Human Rights, 12 January 1995, UN Doc.E/CN/1995/34 para.189; the first UN Special Rapporteur on torture, Professor Koojman; the International Criminal Tribunal for the former Yugoslavia; a UN Commission of Experts established to investigate rape and sexual assault in the former Yugoslavia; the Inter-American Commission on Human Rights, Report No 5/96 Case 10,970, *Fernando and Raquel Mejia V Peru* (1 March 1996). Violence against women has been addressed, too, by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Declaration on the Elimination of Violence against Women.

This report focuses on cases where women of foreign origin claim to have been raped or sexually assaulted in police stations or Civil Guard barracks. They have not necessarily been raped or sexually assaulted because of racial hostility, but because their racial origins have placed them in a particularly vulnerable situation, in which they are more likely than other women to be stopped by police and taken to police stations, or to come into contact with Civil Guard officers.⁴⁴ AI is concerned about continuing allegations of rape and sexual assault and by the absence of working mechanisms for guarding against abuses in police stations - particularly at night and during weekend or holiday periods. AI is also concerned that many undocumented women are too afraid of the consequences of making a complaint. AI is also concerned about the difficulties faced by those victims who have had the courage to lodge judicial complaints.

The ACT stated in 1998 that it knew of 20 complaints of sexual abuse in detention centres, including police stations, in 1996 and 1997 and that, by November 1998 it had learned of nine new cases. *SOS-Racismo* also referred to a rise in the number of such complaints. In 1998 several newspaper reports observed that there had been an increase in such complaints in Spain, and that the victims were almost always young undocumented women, mainly from South America or Morocco.⁴⁵ Both the ACT and *SOS-Racismo* have expressed concern about the particularly vulnerable position of women being held awaiting expulsion in the transit area of Barajas airport.⁴⁶ This concern was underlined by a report in the Spanish daily newspaper *El Mundo* of 20 November 1998 about a 17-year-old Colombian child, Elisabeth C., who was held at the police post at Barajas airport, Madrid, on 24 September 1994. In November 1994 Elisabeth C. returned to Spain and in February 1995 she filed a complaint alleging that she had been sexually assaulted while at Barajas, hours before being returned to Colombia. Had she not returned to Spain, it is unlikely that anyone would have known about the case.

Several Moroccan women have claimed that they were sexually assaulted by police officers in the Spanish North African enclave of Melilla. For instance, in December 1996, Malika Badra, a Moroccan woman, who lived in Melilla, filed a judicial complaint, according to which she had been raped by a police officer after being arrested following a dispute with her boyfriend. Malika Badra claimed that, for a while she had been left alone at the police station

⁴⁴For obvious reasons this report does not deal here with allegations of rape or sexual assault by terrorism suspects held incommunicado.

⁴⁵For example, the Portuguese daily newspaper *Público*, commenting on the situation in Spain, stated: "*Quando detidas, em situação de precariedade emocional e à espera do seu repatriamento, são presa fácil de abusos*" ("When women are detained, in an emotionally vulnerable situation and pending repatriation, they are easy prey to abuse"), (27 November 1998).

⁴⁶"*The transit zone at Barajas is a no-man's-land. Imagine a public official, in the early hours of the morning, with an immigrant in an emotionally precarious {vulnerable?} situation who is about to be returned to her country. If he abused her we wouldn't know, because she's not going to have any contact with anyone who is not themselves a police officer*" - António Moreno Díaz, lawyer and spokesperson for SOS-Racismo, quoted in *El Mundo*, 20 November 1998.

with just one officer, who had forced her to have oral sex. She was later taken to the cells and held overnight. As regards more recent cases, a young Moroccan woman alleged she was raped by two Local Police officers in Melilla in November 1998. One of the officers was formally charged with raping her in a police van after she had left the station; the other was accused of being his accomplice. The officer charged with rape had already been convicted for ill-treatment of a young Melillense in his custody. The officer reportedly stated that he had not raped her but that sex had been consensual. In March 1999 two Civil Guards were arrested and detained pending trial for alleged sexual assault on two Moroccan women. The two women lodged complaints at the National Police station. They alleged they had been assaulted by the officers at 2am on a Saturday morning in the area of Los Pinares de Rostrogordo, close to the Moroccan frontier. AI is attempting to acquire further information about developments in these cases.

AI was also informed about a sexual assault by a National Police officer on a foreign national being held at the Capuchinos detention centre for foreigners in Málaga (Andalucía) in November 1995. Teresa Simónica Matos Braga alleged that she had been sexually harassed by the officer on several occasions, and that he had touched her thighs and hips and tried to open her housecoat. The public prosecutor had requested the officer's acquittal but he was convicted for sexual assault and sentenced to a fine. In April 2001 a young Colombian immigrant lodged a complaint for sexual assault against a National Police officer attached to a transport unit (*Unidad de Transportes*), which polices the train and bus stations. The officer was arrested and detained. According to reports, based on a police statement, the plain clothes officer, who was on duty at the bus station of Valladolid, approached two Colombian women, who were waiting in the cafeteria for a bus to Santander. After asking them for their identity papers, the officer told the two women to accompany him to the police post at the station to check the documents. He then let one woman go, on the basis that her papers were in order, but continued to hold the other, with whose papers he was not satisfied. He shut the door and asked: "What are we going to do?" He proposed sex. The woman began to cry. The officer then lowered the zip fastener on her trousers and forced her to have oral sex.

Immediately afterwards, the woman filed a complaint at the police station. The officer was arrested. He was provisionally suspended from service by the DGP at the request of the *Jefatura Superior de Policía de Valladolid*, Valladolid police headquarters, and an investigating magistrate ordered his provisional detention.

In the above case police action against the officer appears to have been prompt. There are indications that public officials are becoming more aware of the problem, which may partly explain the increase in the cases reported. However, even today new cases can startlingly reveal the impunity that state agents may still enjoy.⁴⁷ The attitude of some Spanish courts when

⁴⁷*El País* of 21 and 22 September 2001 carries reports about a Civil Guard who was detained after being accused of robbery with violence, rape and illicit possession of weapons. He was arrested by Local Police officers. A judge in Mollet del Vallès (Barcelona) ordered his release on bail on the basis that he was "a person without previous convictions and who belongs to the Civil Guard". The

ruling on the degree of severity of a sexual crime is also disturbing. For instance, in October 2001 a Barcelona court convicted a man to a non-custodial sentence for sexual abuse of a child, explaining that the sentence was mild because the sexual abuse was not “especially serious”, i.e. it had lasted only a relatively short time.

AI believes that cases of rape or sexual assault on immigrants continue to occur because some officers believe that the vulnerability of immigrant women without documents, or whose documents are not in order - and who may fear deportation even more than sexual abuse - means that they are unlikely to lodge complaints, or, if they do, that sympathetic judges or a sense of police solidarity or *esprit de corps* will protect the officers from judicial sanction. Police officers have also claimed, in their defence, that immigrant women file false complaints in order to prevent being expelled from Spain. This reportedly occurred in both cases described below (those of Rita Margarete Rogerio, a Brazilian, and Miriam Rosa Verástegui Templo, a Peruvian). They have also often claimed that the alleged rape was not rape because it had been consensual. There is no specific legal obligation in Spain for someone suspected of rape or other sexual abuse to undergo a DNA test. (Parts of the judiciary appear to believe that an obligation to submit to a DNA test in such a case would restrict the fundamental right not to testify against oneself, as well as the right to physical integrity of the alleged abuser). Police officers who have been found guilty of sexual assault or ill-treatment, or are under investigation for such crimes, may still be allowed to operate in posts which allow them access to female detainees.

Women immigrants are often suspected of being sex workers, and may sometimes be seen as easy prey for arrest and ill-treatment for this reason. Many are forced into sex work for criminal gangs, and there are cases where officers themselves are thought to have been actively involved in prostitution rackets, or to have otherwise abused their position of power. In June 2000 the National Police arrested one of their officers in Ceuta. He was suspected of belonging to a network which brought Moroccan women to Ceuta and forced them into prostitution in order to pay for a boat journey from Ceuta to the peninsula. During the operation against the network the National Police found that 21 women were being held by the gang in a building near the old railway station. The women were released. Also in June 2000 five Civil Guards in Orihuela (Alicante) were accused of abusing their authority and sexual exploitation of immigrants. They were accused of eating, drinking and sleeping with women, the majority of them immigrants, at a club, in exchange for protecting the establishment. It should be stressed that the National Police and Civil Guard are actively engaged in combating the prostitution gangs.

Two cases describing allegations of rape or sexual assault by police officers are given below. They illustrate the effective impunity which police officers may still enjoy in Spain; the painful hurdles faced by those women brave enough to lodge complaints, and the length of time

judge described the role of Civil Guard as that of someone who “serves peace and security”. However, in January 2002 the Court of Barcelona revoked the order of the first court and ordered the detention of the officer, whom it believed had committed a “triple rape” and to have illegally detained the woman’s son.

judicial proceedings in such cases may take, contributing to the sense of impunity.⁴⁸ The case of Rita Margarete Rogerio (see below) illustrates the reason why a number of women may prefer to avoid taking legal action. While still in police custody she was unable to speak freely to doctors or lawyers. Later she faced a fierce press campaign against her by police officers and unions. The details are based on legal documentation supplied to AI.

Rita Margarete Rogerio

On 29 August 1995, at 0.30am, Brazilian national Rita Margarete Rogerio was arrested by officers of the *Brigada Provincial de Extranjería* (aliens unit) of the National Police in the Barakaldo area of Bilbao, who were carrying out raids on the Trastevere and Hollywood night clubs in a search for unauthorized foreign sex workers. Rita M. Rogerio, whose connection with prostitution was never established, and who vehemently denied any such connection, was taken to the main police station in Bilbao (*Jefatura Superior de Policía*) and at 4am was accompanied to Basurto Hospital after being allegedly beaten and apparently fainting. She was then returned to the police station, and it was at this point that the rape was reported to have occurred. The rape was allegedly committed by a uniformed officer who took her to the cells and told her: "Prostitutes like fucking".⁴⁹ She was later again taken to hospital and was released from custody on 30 August. The same day she attended hospital a third time for medical examinations. She was found to have multiple haematoma on her arms, legs and back, compatible with blows delivered by a hand, belt or leather strap, and scratch marks on the groin compatible with an attempt to force her legs apart. Two expert psychiatric reports agreed that she was also suffering from post traumatic stress as a result of rape.

The public prosecutor did not accept that there was a case against the police officer, or indeed that the rape had occurred, and Rita Rogerio brought a private prosecution against the officer. On 4 June 1998 the Court of Vizcaya (*Sala segunda de la Audiencia Provincial de Vizcaya/Bizkaiko*) found that Rita Rogerio had indeed been beaten and raped while in police custody, and had consequently suffered from post traumatic stress. But it acquitted the three officers - the alleged rapist and the other officers who had been on duty - because no officer would provide evidence against the others, despite the fact that the disposition of the station meant that the rapist must have been seen entering the cells.

The court stated that, despite the acquittal verdict, it had felt far more sympathetic to the thesis of the private prosecution than to the defence or the public prosecutor. It dismissed

⁴⁸Another example of the latter problem is provided by the case of María del Pilar G.F. In May 1999 the Supreme Court confirmed a nine-year prison sentence against a National Police officer who had raped a detainee in an isolation cell of the police station of Nou Barris (Barcelona). The incident had taken place 22 years before, on 7 August 1977, but the reasons for such an extraordinary delay are not known to AI.

⁴⁹"*A las prostitutas lo que les gusta es follar*".

out of hand the police argument that Rita Rogerio had brought an accusation of (false) rape because she wanted to stay in the country, and found her to be “90 per cent” reliable and consistent in her evidence. Referring to a defence criticism that, while she was in custody, Rita Rogerio had not told doctors or lawyers that she had been raped, the court found that she had been “literally terrorized” by the thought of police proximity. The door of the hospital room where she had been examined had been left open, so that she could not feel secure. At the police station, a lawyer had requested privacy with her, but when he tried to close the door, an officer obstructed him with his foot and the interview was therefore held within police hearing. With regard to apparent inconsistencies in Rita Rogerio’s identification of the police officer who raped her (Rita Rogerio had recognized him in 13 identity parades involving 65 officers), the court described the weaknesses inherent in identity parades, which were “eminently subjective” in character.

In a judgment dated 21 April 1999 the Supreme Court, expressed its dismay at the verdict of the Vizcaya court, while recognizing that the court had been obliged to acquit the officers because of the lack of evidence presented. The Supreme Court stated that “it must have been as clear as daylight” to the two duty officers that the third, who had entered the cell, was the same person who had committed the rape. It was incompatible with the democratic rule of law that an “extremely serious and proven case of rape” remained unpunished because of “archaic corporatist ideas of false camaraderie.” The Supreme Court continued that, while the Vizcaya court had been obliged to confirm the acquittal, the witnesses in the case had been involved in “lying complicity” and asked the Vizcaya court to request the opening of a high-level police investigation to decide what disciplinary measures could be taken against the officers concerned. These had continued in their posts, which required that all persons, including foreigners, be given protection.⁵⁰

On 27 May 1999 two officers were suspended from duty. The Interior Minister expressed his “repugnance” about the case, about which he said he had not been aware. On 12 January 2000 a new trial opened against two National Police officers (but not the alleged rapist) for torture of Rita Rogerio. The officers denied torture and were again supported by the public prosecutor. On 22 March 2000 they were acquitted on grounds of lack of evidence identifying those responsible. An appeal to the Court of Cassation was not entered.

Miriam Rosa Verástegui Templo

Miriam Rosa Verástegui Templo, a Peruvian national and an agricultural engineer, had a valid work permit but was still waiting to receive a residence permit. Her brother was also living in

⁵⁰“*El recurso de casación ... presente a la censura ... una resolución que bien puede clarificarse de estremecedora*” . [An administrative and disciplinary police inquiry must take place] “...para evitar que en un Estado democrático de Derecho unos funcionarios policiales, que por mor de trasnochadas ideas corporativas o falso compañerismo, encubran un gravísimo delito de violación acreditado y constatado, permanezcan en tal cometido y funciones que exigen la protección de todas las personas, extranjeros inclusive, y a no ocultar a la justicia cuanto conozcan.”

Spain. On 20 June 1998, at about 6.30pm, during a routine check, she was questioned by National Police officers in the Gran Via in Madrid and, on the grounds that she lacked proper documentation, was taken to a registration office for detainees, the *Registro Central de Detenidos* in Mortalaz, where she was held throughout the night. At 8am on 21 June she was taken to a National Police station, the *Comisaria de Extranjeros*, where a woman police officer attached to the unit specialising in registration of foreigners - the *Brigada Provincial de Extranjería y Documentación* - noticed that she seemed to be behaving strangely. When the officer asked her the matter, Miriam Verástegui told her that, while being held at the central registry office, a police officer had sexually assaulted her. The woman officer advised her to lodge a complaint, but the Peruvian, who had two small daughters in Peru, and was sending them money "to eat and live", said she was afraid of the consequences for herself and brother, and indirectly for her family. ("I don't want a fuss. My children have to eat"⁵¹). Miriam Verástegui stated that the officers at the police station, particularly the woman officer, treated her with much kindness, listening to her and trying to overcome her reluctance to make a complaint. This, at last, she decided to do.

In her complaint Miriam Verástegui alleged that, at 2am on 21 June, the duty officer entered her cell and offered her a cigarette. He then began to sexually assault her. Trying to escape him, she said she had to go to the toilet. He followed her there and, while she was washing her hands and face, grabbed her by her belt and renewed the assault, attempting to drag her to a nearby bed, lowering his trousers, lowering her knickers, trying to fondle and kiss her and attempting to penetrate her while pressing her against a wall. He told her he wanted to penetrate her ("*clavarla*") and that she should not worry because he had had a vasectomy. She did not cry out because she was afraid that other officers might come and assist with the assault. However, she pushed him away and ran back to her cell. Before locking the door and turning out the light, the officer said he would return later but did not.

After Miriam Verástegui had filed a complaint, she was taken for treatment and tests to the Hospital General de la Paz. The tests reportedly showed traces of semen in a portion of her underclothes.

On 29 June 1998 a face-to-face meeting (*careo*) took place between Miriam Verástegui and the officer, in the presence of an investigating magistrate and prosecutor. At this "confrontation" the officer claimed that Miriam Verástegui had falsely accused him because she wanted to stay in Spain. Both denied the other's statement. The prosecutor noted that the officer had a "superior" attitude ("*trato de superioridad*") towards the witness and that the judge had been obliged to remind him several times to treat her with respect and not to use the familiar "tu" form to her. When the prosecutor asked about an earlier investigation into a similar complaint made against him by a detainee he replied that a "gypsy", detained for a drug offence, had accused him of exposing himself to her. He denied the allegation, saying that he

⁵¹ "No quiero jaleos. Mis hijas tienen que comer."

had merely been rubbing his testicle while he waited for her to emerge from a toilet. The investigation into the incident was still open.⁵²

In May 1999 the officer reportedly refused to undergo a DNA test to determine whether the traces of semen found on the victim belonged to him, although he subsequently agreed to undergo a test. On 13 March 2001 the police officer was finally formally indicted by the public prosecutor for sexual assault, under Articles 178 and 180.3 (sexual assault on a particularly vulnerable person) of the Penal Code, but not with torture, as the private prosecution had argued.

After an initial postponement, the trial was set for November 2001 before the Fifth Section of the Court of Madrid (*Sección 5ta de la Audiencia Provincial de Madrid*). However, this was again postponed and is now scheduled for April 2002.

⁵²On 18 October 1996 a detainee at the *Registro Central*, called Adela López Hernández, accused the same officer of exposing himself to her as she came out of the washroom and was returning along the passage to her cell. The officer had reportedly offered to move her away from the other detainees to somewhere more comfortable, and had given her soap so that she could wash. The incident was reported by another officer to his inspector. The case was still pending.

B.3. Other torture or ill-treatment

Figure 1 Driss Zraidi [*Rafel Bosch*]

AI believes that physical ill-treatment and abuse of authority by police officers with regard to immigrants and members of ethnic minorities is frequent and widespread, although, for a variety of reasons, only a small number of ill-treatment cases result in judicial complaints. (AI has information about cases where the alleged victim was too frightened to make a complaint and does not want the case publicized). The information available to AI suggests the existence of a disturbing pattern of “racial profiling”, whereby persons are stopped and searched on the basis of their race or ethnic origin. If thought to be resisting or questioning police identity checks, they may be abused and assaulted and end up in hospital, sometimes with serious injuries.

he laws that regulate the forms in which arrests of Spanish nationals and foreigners are made, and which seek to protect the rights of those arrested and detained, are laid out in Articles 489-501 and Articles 520-527 of the Code of Criminal Procedure, as well as in the deontological, or ethical, codes of the different police forces (and Civil Guards). Article 520 establishes the rights of those arrested and held in police custody. Detention or provisional imprisonment should not last any longer than strictly necessary and (except in “terrorist”-related cases) not longer than a maximum of 72 hours. All detainees must be informed, immediately and in comprehensible form, of the charges against them and the reasons for the charges. They have the right to see a lawyer or a doctor and to inform a relative or any other person, at any time, that they have been detained. They have the right to be assisted, free of charge, by an interpreter where they do not understand or cannot speak Castilian Spanish.

Organic Law 1/1992 (*Ley Orgánica 1/1992, de 21 de febrero, sobre Protección de la Seguridad Ciudadana - LOPSC*), sets out the framework within which the rights of those arrested and detained may be exercised. For example, Article 11 establishes that foreigners, like all Spanish citizens over 14, must possess identity papers, and these must prove that foreigners have the legal right to be in Spain. According to Article 20, law enforcement agents have the right to request identity papers on the street or elsewhere, for the purposes of investigation and prevention of crime or offence. These officials have the right to take those who cannot be identified to nearby police stations where their identity or status can be established. Article 20 is applied with proportionately greater frequency to foreigners than to Spanish citizens, and foreigners are more likely than Spanish citizens to be detained, for varying lengths of time, while their identity is being checked by the National Police. It is also the case that, although the law

stresses that detention is an exceptional measure, in practice it is widely used in relation to foreign nationals and those of foreign appearance.

AI believes that ill-treatment by police officers is both frequent and widespread, but that only a small proportion of cases result in judicial complaints. In recent years there has been an increase in the number of reports received from individuals of non-Spanish origin and from undocumented immigrants. However, several complaints received by AI have subsequently been withdrawn because of fear that, by attracting publicity to ill-treatment by public officials, an application for a work and residence permit will be put in jeopardy. Several such individuals have told AI that they have decided not to lodge a complaint about ill-treatment on the basis of advice from their lawyer.⁵³

Despite the increase in the number of complaints received by AI, these are only a fraction of the total amount reported. For instance, *SOS-Racismo* documented over 20 cases of ill-treatment by law enforcement officers in 2000 (including allegations of, and convictions for, ill-treatment) and, as mentioned below, a report on one area of Bilbao in one year studied 67 cases.

This report on race-related ill-treatment was published in Bilbao (Vizcaya) in March 1998. “*El Color de la Sospecha*” (“The Colour of Suspicion”), dealt with police ill-treatment of immigrants in the area of San Francisco in Bilbao, a run-down area of the city, widely associated with poverty and drug-trafficking and, at the same time, one of the most culturally and ethnically diverse in the Basque Country.⁵⁴ It was published in collaboration with a team from *Ararteko*, the Basque Ombudsman’s office, which itself published a highly comprehensive study of police ill-treatment in that area, presented to the Human Rights Commission of the Basque Parliament in June 1999.⁵⁵

“*El Color de la Sospecha*” focused on the testimony of 52 individuals and examined 63 cases of alleged ill-treatment, by the Municipal Police of Bilbao or the Basque autonomous police, the *Ertzaintza*. The cases took place in 1997. Most victims were men between the ages of 17 and 62 from Morocco, Angola, Zaire, Senegal, Guinea-Bissau and Equatorial Guinea.

⁵³One example is A.E. M., a Moroccan worker, who alleged that in December 2000, in an area of Alicante, he was beaten in National Police custody, while handcuffed, after being arrested on suspicion of theft and illegal occupation of a hut by a building site where he was working. A friend stated that he saw his injuries as he left the police station. A medical report and photographs refer to or show bruising of the eye area and part of the head.

⁵⁴“*El Color de la Sospecha: El maltrato policial a personas inmigrantes en el barrio de San Francisco (Bilbao)*”, March 1998, Beatriz Díaz and Javi Fantova.

⁵⁵“*Dossier completo sobre la intervención del Ararteko respecto a actuaciones policiales con personas de origen extranjero en la zona de San Francisco (Bilbao)*”, 17 June 1999, and “*Seguimiento del cumplimiento de las recomendaciones del Ararteko al Departamento de Interior del Gobierno vasco y al Ayuntamiento de Bilbao en relación con las actuaciones policiales hacia personas de origen extranjero en la zona de San Francisco*” (*Informe al Parlamento Vasco*), 29 February 2000

Some were Spanish nationals; some had residence permits; others were asylum-seekers or refugees; some were awaiting papers and others were undocumented. However, although most cases involved male victims, the case which had originally focused attention on the issue of police ill-treatment in the San Francisco area was that of a woman of Angolan origin named Lili Tabares, who had worked there for 20 years as a shopkeeper. In 1997 she and her son were taken into the custody of officers of the *Ertzaintza*. She was beaten and her arm was broken.

The report, based on research carried out in the area, mainly derived from the testimony of alleged victims, concluded that police officers in the area frequently approached individuals because they looked foreign.⁵⁶ The criteria for approaching an individual, or carrying out a raid were often the skin colour, the physical aspect, and sometimes the kind of clothes or shoes (expensive clothes could be seen by police as a sign of criminality, such as involvement in drugs). Officers often refused to explain to these individuals why they were being intercepted or detained, did not provide proof of their own identity, and indulged in insults and beatings, threats and harassment. In the case of the Municipal Police, there were complaints that objects or money were stolen or confiscated from street vendors and not returned. At police stations there were often no translators or lawyers.⁵⁷ The report noted a pattern whereby, if police authority was questioned or challenged, individuals were more likely to be insulted or physically assaulted. Forms of assault were described as beatings with truncheons, punches or kicks. There were cases where beatings had resulted in fractures, jaw dislocations, cuts to the face, bruises and welts. Victims often had to find their own way to hospital. There were also instances of illegal detention. For instance, individuals were abducted in a patrol car and then abandoned in an outlying area, instead of being taken to a police station (see also B.4). Others were held at a police station for periods varying between several hours and three days, without being informed of the reason for their detention. If complaints were filed, counter-complaints were made by officers. This was found to be a “very frequent” practice. The response to police aggression, sometimes just a request for an explanation, was often interpreted as “resistance to authority”.

Ararteko's report corroborated such findings. The Basque Ombudsman's office studied 47 cases of alleged ill-treatment between 1997 and early 1998. Most incidents (three out of four)

⁵⁶One reported reason sometimes given by officers for stopping persons of foreign appearance is that they represent a “security risk”. This was the reason reportedly given in the case of Ahmed Chahbar, who claimed he had been assaulted by a Civil Guard sergeant in April 1998. The sergeant, convicted at first instance but acquitted on appeal, had reportedly said that “the colour of his skin implied a security risk” (“*El color de su piel implicaba un peligro para la seguridad*”). The case was publicised by ACT.

⁵⁷According to Article 14 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, (Body of Principles), anyone who does not understand or speak the language of the authorities is entitled to have an interpreter to help them with the legal proceedings after arrest, free of charge if necessary.

took place in the street rather than in the police station, and did not lead to arrest. One practice about which the Ombudsman expressed specific concern was that of grabbing a suspect by the neck and forcing open the mouth to look for drugs. This practice was found to be disproportionate in its violence and was often used not against drug traffickers but consumers. Officers were often accused of racist abuse, such as “*Negro de mierda*” (“dirty black”) or “*Puta negra*” (“black whore”) or racist remarks were made to (white) witnesses who had tried to intervene, such as: “*Pero a Vd no les molestan los negros?*” (“Don’t blacks bother you?”) or “*Y tu, que haces con un negro?*” (“What’s a black got to do with you?”)

Ararteko found that treatment in police stations, compared to on the street, was usually correct, but that an interpreter was rarely available, and it was also very difficult for foreign nationals to lodge complaints (see section D). It found that the version of events of persons of foreign origin and the views of the police were radically opposed. When approached by *Ararteko* about their findings, the police recognized the gravity of the allegations but at the same time often denied them or referred to them as “isolated” or as arising out of the aggression of the suspect.

Ararteko’s study concluded that the police acted in a way that: a) involved a violation of the rights of persons of foreign origin; b) had serious consequences for the integrity and dignity of those affected; c) showed disproportion between the actions and the objectives pursued and aims achieved; d) were not subject to any subsequent judicial proceedings. While it was difficult to determine how widespread they were, such police actions were definitely not isolated incidents but “habitual and fairly extensive”. The Ombudsman made eight recommendations relating specifically to police conduct.

On 29 February 2000 *Ararteko* published and presented to the Basque Government a follow-up report which stated that, although there seemed to be a real will by the authorities to implement a part of their recommendations, no appreciable improvement could be detected so far as regards reinforcement of control mechanisms; prevention of discriminatory conduct; eradication of the practice of seizing a suspect by the throat and forcing open the mouth; acceptance of requests for an explanation for a police action without this being interpreted as a lack of respect towards the police; reduction in detention times and availability of interpreters. It should be added that, since 1999, a number of other cases had been brought to *Ararteko*’s attention, either by individuals or by NGOs acting on their behalf.

The findings of both above-mentioned reports were, of course, limited to one part of one city within one part of the Spanish state. However, they clearly corroborate those made by AI as a result of several years of investigation of individual cases brought to its attention from all over Spain. In a large proportion of such cases suspects who have been seen to “resist” an apparently random identity check, or to question the reason for being stopped and questioned, have ended up in hospital - sometimes with serious injuries - in addition to which, they face police counter-complaints if they lodge a complaint of their own.

Below is an illustrative selection of cases from different parts of Spain and from different ethnic communities or nationalities. The victims, or alleged victims, are mainly Moroccan. Some are from South America. One is a US citizen. In most of these cases a judicial complaint was filed against public officials. Some cases involving Roma are listed separately.

Many other cases are known to AI. In some of these, a formal complaint has not been lodged and/or the alleged victim has not wanted their case to be publicised. The list below is not, therefore, able to illustrate the problem facing those who are too afraid to lodge complaints, or who have been counselled against doing so.

Monaim El Baragragui

A Moroccan citizen of Berber origin, resident in Gran Canaria since 1991, claimed that on 1 September 1997 he was ill-treated while in National Police custody in Melilla. Monaim El Baragragui had travelled to Melilla, among other things, to sort out some wedding arrangements and visit his family there. However, he needed a visa to return to the Spanish peninsula. He claimed that, at about 9pm, he saw two National Police officers standing in an area between the frontier with Melilla and Morocco and approached them to ask for information as to what to do about the visa. He alleged that he was pushed by one of the officers, who said “Go back to Morocco!” (“*Vuelve a Marruecos*”). Monaim El Baragragui said that he could not because he was legally resident in Spain and was travelling in connection with his wedding plans. According to his account, he was then hit with a truncheon. Three other officers approached. When he said that he was going to lodge a complaint, the five officers began to beat him on the head, shoulders and various other parts of the body, at the same time shouting racist insults. He was finally handcuffed and taken to the police station, where he was charged with assaulting an officer. His repeated requests to be taken to a doctor were apparently ignored and he remained standing, in considerable pain, for over an hour while officers “sang flamenco” beside him. After about three hours he was taken to see a doctor, who submitted a medical report to the Court of Melilla.

When Monaim El Baragragui was returned to the police station he was told that he was being detained and was placed in a cell with about 50 others, the cell was so crowded they had to stand - although, he said, some other cells were empty. He was not given anything to eat or drink and was not allowed to go to the toilet or to contact his family. He alleged that he and his co-detainees were “treated like animals” and that he saw that others were being “continually beaten with truncheons”; some were bleeding from their injuries. He was held at the station for three days, being given one *bocadillo* (sandwich) to eat a day, before appearing before a judge. Police officers threatened him, saying he would be expelled from the country. When he went to court he told the judge that he had been ill-treated, and that there were witnesses to the incident. He was provisionally released and later filed a complaint through his lawyer. He added that his family had come to the police station to look for him but had been told he was not there. AI is currently attempting to obtain the latest information about this case.

Driss Zraidi

On 3 August 1998 Moroccan national Driss Zraidi was allegedly twice assaulted by officers of the Catalan autonomous police, the *Mossos d'Esquadra*. The first assault reportedly took place when he was on his way to work in San Pedro Pescador (Cataluña). He was stopped for an

identity check, in apparent connection with a driving offence. According to reports, when first stopped he was placed against a wall and ordered to raise his hands in the air. He was grabbed by the back of the neck and his head was pushed back against the wall, causing his mouth and front teeth to bleed. He was kicked on the ankle, then thrown to the ground and repeatedly kned. During the alleged assault his gold chain and glasses were broken. Other officers arrived. Driss Zraidi was driven to the *Mossos* station in Rosas, a coastal town north of San Pedro Pescador. He was held there overnight. He alleged that, during the night, a group of officers came into his cell and racially insulted and again punched him. He pleaded with them to stop. In a statement to the investigating judge he said that his sleeping area was covered in blood. A duty doctor saw him the next day and advised his immediate transfer to hospital. He was escorted by police to Figueras hospital, where X-rays revealed three fractured ribs. There were also chest injuries. He was then taken back to Rosas police station.

Driss Zraidi appeared in court on 5 August. No charges were brought against him and he was released from custody. The following day he felt unwell and again went to hospital, where he received treatment and remained for eight days.

An inquiry into the allegations of ill-treatment was opened by the General Directorate of Citizen Security, (*Direcció General de Seguretat Ciutadana*). Eight *Mossos* were suspended from duty for a month and one officer, who reportedly admitted the assault, was taken into custody. In September 1999 the Catalan Government authorities confirmed to AI that a judicial inquiry was under way and that the officers had been suspended from work, with concurrent suspension of pay. One officer had admitted to the assault, but by 2001 the case was still languishing in the magistrates court of Figueras (*Juzgado de Instrucción 5 de Figueras*). According to AI's information, at least 10 officers were aware of the assault without doing anything to prevent it and without reporting it afterwards. A tape recording of the incidents apparently recorded five different conversations in which officers discussed the assault, and another recorded the sounds of blows and cries, but there appeared to be some difficulty with regard to identification of the voices. Driss Zraidi, whose Spanish was reportedly very poor, was having difficulty in finding a lawyer to take an interest in the case.

Muhamadou Bah

Muhamadou Bah, of Gambian origin, had been living in Bilbao for 10 years. He was arrested on 16 March 1999 by the Municipal Police and subsequently provisionally detained in connection with a drug trafficking charge. Muhamadou Bah was among those who had collaborated with the two above-mentioned reports, "*El color de la sospecha*" and the *Ararteko* report, and he claimed that, after being taken to Garellano police station, a plainclothes police officer, who had not taken part in the arrest, told him: "*Esto te pasa por ir al Ararteko.*" ("This is happening to you because you went to *Ararteko*"). *Ararteko* considered that, if the allegation were true, it would amount to a clear expression of contempt for the Ombudsman's office, as well as a hindrance to its work. It opened an investigation, without finally being able to establish the identity of the officer or veracity of the claim.

On 15 September 1998 Muhamadou Bah was one of 11 persons of African origin to be arrested in a grocery store in the San Francisco area of Bilbao. All complained that the

arrests had been unjustified because the Municipal Police had detained everyone at the store without asking who they were or why they were there. The arrests were generally thought to be a response to an assault on an officer that had taken place earlier that day in the same area. The 11 Africans claimed that they had been beaten with truncheons in the course of the arrests. They claimed they had also been threatened and forced to remain lying on the ground with the lights extinguished until police reinforcements arrived. They claimed they had been deprived of their liberty for an excessive length of time, that they had been systematically strip-searched and that there had been delays in advising lawyers of their arrest. Muhmadou Bah alleged that, after the 15 September arrests, plain clothes Municipal Police officers came up to him in the street and one said to the other, "*Mira, ese es el cabrón que nos denunció al Ararteko.*" ("Look, this is the fool who complained about us to *Ararteko*"). He also claimed that, when he was being held in police cells on a previous occasion, officers had watched and mocked the Muslim rites he needed to perform five times a day. This was denied by Bilbao's city council (*Ayuntamiento*), responsible for the Municipal Police. However, the *Ayuntamiento* also disconcerted *Ararteko* by claiming that some detainees of foreign origin had used the name of *Ararteko* to undermine the work of the Municipal Police and to generate the idea that there was police persecution for racist and religious reasons. *Ararteko* described the comment as "unfortunate" and reminded the city council of *Ararteko*'s legal remit to defend citizens from possible abuse or negligence by public officials by the use, among other things, of formal complaints.

Benaissa Belaoui

Benaissa Belaoui (pictured below) is a Moroccan national who had lived for 11 years in Spain and was legally resident there. However, although he occasionally found work as a bricklayer, he reportedly had difficulties getting a permanent job, because he could not speak Spanish and was partially deaf. He therefore supported his three children by selling pirate CDs. On 6 October 2000, at about 9.30pm, he and a companion were selling CDs outside a supermarket at Quevado (Chamberí) in Madrid. According to reports, they were spotted by two officers, who got out of their car. When Benaissa Belaoui and his companion saw the officers approaching they ran into a nearby alleyway, taking with them a rucksack containing the CDs. They were pursued into a dark area where, according to the police, Benaissa Belaoui and his friend took a chain from the rucksack and threatened the officers. There was a struggle. At some point the friend fled. The officers called for reinforcements and further officers arrived in patrol cars and on motor bikes. Benaissa Belaoui was allegedly knocked to the ground, then beaten with rubber truncheons, kicked and punched, while he tried to ward off the blows with his hands. According

to Benaissa Belaouni, the officers took it in turns to hit him. He was taken in handcuffs to the National Police station of Chamberí. He alleged that, in the momentary absence of National Police officers, the Municipal Police officers continued to beat him in a closed room, while he was still handcuffed. He stated that a National Police officer then entered and told the Municipal Police officers to go away, saying that they were not supposed to be there.

Figure 1 Benaissa Belaouni [*private*]

Benaissa Belaouni was taken by police for medical treatment and a medical report was issued, recording bruising and contusions on the head, chest, left thigh and area of the left kidney and legs. He reportedly had difficulty walking, and at the end of 2001 was still suffering from depression as a result of the incident. He was taken before a judge on 8 October and provisionally released 12 hours later. He later received further medical tests at the La Paz hospital. Two police officers also claimed that they had been injured in the struggle.

Benaissa Belaouni lodged a judicial complaint on 10 October and was receiving support from immigrant associations. Madrid City Council (*Ayuntamiento*) also opened an investigation into the conduct of six police officers and an internal inquiry was opened by the Municipal Police. No further developments are known to AI at this stage.

Hassan U. and Said M.

A judicial investigation opened into the alleged ill-treatment of two Algerian immigrants, one a 17-year-old minor, by Local Police in Ceuta on 14 October 2000. Said M. and Hassan U. claimed they had been severely beaten both at point of arrest and in a police station after fleeing a dispute with two other North Africans in the Calamocarro area. They were then stripped to the waist and beaten while being pushed into the car. The minor, Said M., allegedly lost consciousness at the station and was brought round by use of a hose pipe. Hassan U. claimed that he saw Said being beaten with the hose pipe at the same time as it was being used to restore him to consciousness. One of the officers reportedly shouted “*Muérete, hijo de puta*”. (“Die, son of a bitch”). They were then put into a police car and beaten again, and returned to the same area where they had been found. They were discovered there by Civil Guards, whom they asked for help. They were then taken to the Insalud hospital in Ceuta. A medical report referred to a number of injuries and cuts. A photograph of the injuries reportedly caused to one of the Algerians was published in *El Mundo* of 19 October 2000.

Marta Elena Arce Salazar

A Costa Rican anthropologist, Marta Elena Arce had lived in Cataluña for two and a half years, where she was engaged in postgraduate studies. Prior to arrest she had taken part in

an immigrant lock-in at the church of Santa María del Pi (Barcelona). According to Marta Arce, on 2 April 2001 she was arrested in Plaza Catalunya in Barcelona, where she and several other immigrants met daily, on grounds of assaulting a police officer (*atentado contra un agente policial*). Marta Arce claimed that four or five officers had approached the group and asked for their mobile phones. She asked why and was told that a mobile phone had been reported stolen. Marta Arce asked why they, in particular, were being asked to show their phones. An argument ensued. Marta Arce alleged that the officers insulted her with phrases such as “Dirty South American whore” (“*sudaca de mierda, puta y subnormal*”). She was allegedly beaten. She was taken to the police station in Rambla Nova in the Ciutat Vella. At her request she was taken to the Hospital del Mar in the Drassanes area and a medical certificate was issued. The four officers who took her to the police station accused her of assaulting one officer with a gas canister, which she admitted having in a pocket and which she claimed went off when she was thrown to the ground. Marta Arce was held overnight and the following day at the station and at 11pm was taken to the foreigners’ detention centre of La Verneda. The next day, at 9am, her fingerprints and a photograph were taken, after which she appeared before a judge. Marta Arce alleged that during the time that she was held at the police station she had to sleep on a mattress on the ground, and the first night had no blankets. She made the serious allegation that she had not been able to contact a lawyer or any friend or relative by telephone, and in fact, was not able to see a lawyer until 4 April. On 4 April she was visited by a forensic doctor attached to the court and at 3p.m. was again taken before the judge. At 8p.m. she was released.

Ibrahim Saad Llah

Libyan-born Palestinian Ibrahim Saad Llah lodged a complaint with the Court of Ceuta, against four National Police officers who allegedly assaulted him on 9 May 2001. In his complaint the young Palestinian stated that, at about 10a.m. he had gone to the National Police station to ask for documentation that would enable him to leave Ceuta and travel to the Spanish peninsula. He was grabbed by the four officers, who were in plain clothes. Two of them then beat him with truncheons, while the other two punched him. He was beaten on the side, the legs, the head and the chest and did not know of any reason for it. After the beating he was held at the police station for two days, after which there was an attempt to expel him to Morocco, but the Moroccan authorities refused to accept him. The National Police then returned him to Ceuta and left him in the vicinity of Sidi Embarek in the Rosales area. Others, who were not police officers, took him to the Red Cross hospital, where a medical report was written and submitted to the court. Ibrahim Saad Llah said that he would be able to recognize the officers if he saw their photographs. According to one report, however, there were no witnesses.

Nouredine Hathout

Moroccan national Nouredine Hathout, who allegedly insulted and assaulted by three police officers in Málaga (Andalucía) on 24 November 2001. A judicial complaint against the officers was filed with the Magistrates Court (*juzgado de guardia*) of Granada on 26 November.

According to press reports⁵⁸, Nouredine Hathout, who runs an export company in Granada, was waiting at Málaga bus station when he saw an elderly Moroccan man being shaken vigorously by a young man. He and some others intervened and the young man identified himself as a police officer. Nouredine Hathout spoke to the elderly Moroccan in Arabic, explaining that the man was a police officer and it was advisable not to resist. The elderly man was taken to a nearby room. He later emerged, saying that he had been insulted and that in the room was another Moroccan who did not speak Spanish. Nouredine Hathout then knocked on the door of the room to offer his services as a translator. An officer emerged and told him not to interfere. He pushed him and asked for his identity papers. When Nouredine Hathout protested about his manners, the officer grabbed him by the chest and pushed him against a wall. He was then put in the room, where three officers insulted him with phrases such as “*Moro de mierda*” (“Arab shit”) and “*Vete a tu país*” (“Go back where you came from”). He was searched, accused of trafficking in drugs and threatened with suspension of his application for Spanish nationality. After he said that he would file a complaint against them, he was told by one officer that he already had “2500” complaints pending and that the lawyers and judges were sweating over all the work. He was then taken to a police station where, for an hour, he was refused permission to see a lawyer or to be taken to the hospital. Later, when other officers appeared, he was taken to the Carlos Haya clinic, where a medical report referred to contusions and grazing (*erosiones*) on both sides of the neck. He was then taken back to the police station, where he said he was again beaten. He subsequently told the Spanish newspaper *El País* that an attempt was made to plant a knife on him. He was released 10 hours after the incidents at the bus station had occurred.

This version was rejected by the police account, which was offered to the press by the Spanish government office (*subdelegación del Gobierno*) in Málaga. According to this, Nouredine Hathout had intervened while they were identifying a Moroccan national and had called them racist. When they asked for his identity, he hit one of them on the head. After he was taken to the police station he was taken to hospital and was later found to be in possession of a knife. The police denied that that there had been any physical ill-treatment.

Boaventura Simão Vaz

Boaventura Simão Vaz, a national of Guinea-Bissau, and a mechanic by trade, alleged that on 1 March 2001 he was eating with two others in a bar in Madrid when a plain clothes National Police officer approached and asked for his identity papers. As he was looking for them, and before he had said anything, he was dragged out of the bar, handcuffed and taken to a police station. Boaventura Simão Vaz claimed that he was not told the reason for his arrest and no explanation of any sort was given to him. Once at the station he was simply told that there was an order out for his arrest. He was later told he was suspected of trafficking in drugs, which he denies. In his complaint to the investigating judge of a Madrid court, dated 13 March, he stated that he saw another detainee being struck by an officer and protested about it. Three officers

⁵⁸*El País*, 28 November 2001, *Diario Sur*, 28 November 2001

then punched and kicked him, threw him to the ground and threatened him with a pistol. They also insulted him racially with words such as: “*Negro de mierda*” (black scum). He stated that during the assault, five ribs were broken, but the police failed to provide any medical assistance while he was in the station. They also smashed his mobile phone.

The same day he went to the accident and emergency department of San Carlos Hospital with intense pain in the left side of his chest. A medical report issued by the hospital on 7 March confirmed that he had five broken ribs and was suffering from internal bleeding. He remained in hospital for treatment for several days and was due to receive further tests.

Rodney Mack

The principle trumpet player for the Barcelona Symphony Orchestra (*Orquesta Sinfónica de Barcelona y Nacional de Cataluña*), an African American US citizen, was reportedly beaten by police so badly on 15 January 2002 that he was unable to appear with the orchestra at a performance at the Carnegie Hall in New York, on 1 February.

Rodney Mack, (a cousin of the famous trumpeter Wynton Marsalis), was reportedly attacked by four police officers who mistook him for a car thief, who had been described as a black man of about the same height. Rodney Mack had just finished a rehearsal when he was approached in an underground garage in central Barcelona by plain clothes officers wearing jeans and leather jackets. The men grabbed his arms and threw him to the ground, pressing his face onto the concrete. He said he was beaten on the back and legs and there was an attempt to cram an object into his mouth. He thought he was being mugged and shouted to them to take his wallet.

The Spanish police reportedly admitted there had been a “misunderstanding” and that, owing to “the colour of his skin and his height”, the officers had believed him to be a car thief who had been operating in the garage.⁵⁹ The police also claimed that he had put up “violent resistance” to arrest and that one officer had been treated for a broken rib. The Spanish government promised an investigation into the incident, while the police officers remained on duty. Rodney Mack disputed the police version of the incident. He said the officers did not identify themselves until after he had been handcuffed. They then told him they were looking for a “coloured man” (“*hombre de color*”) or a “black man”. He was charged with resisting arrest and attacking a police officer.

Figure 1 Rodney Mack [*NOCCA Institute*]

Rodney Mack reportedly required hospital treatment for bruises and cuts to his back, buttocks and calves, as well as for a neck injury and a cut to the inner lip - of special concern

⁵⁹The quotations are derived from an article in the *New York Times*, 31 January 2002

for a trumpet player. He said the first visit to a local hospital had been perfunctory. He was then taken to police headquarters and released five hours later, after questioning, when he returned to the hospital. He subsequently returned to the USA to recuperate. According to reports, he was having trouble holding the trumpet, breathing deeply and sleeping. He was planning to lodge a formal complaint for assault and wrongful arrest. "The reason I'm going to press charges is that it seemed they wanted me just to take the beating and then go home. I just want to prevent that from happening to someone else".

Immigrant demonstrations

AI's reports have several times referred to allegations of police use of excessive force during demonstrations, including demonstrations by immigrants. AI was concerned by reports that, on 22 January 2002, a charge against undocumented immigrants peacefully demonstrating at the Alcazaba in Almería capital, in support of their demand for work and residence papers, ended with 11 arrests and up to 20 injured. The police intervened, with tear gas and rubber bullets, in order to oust about 300 demonstrators, who were encamped at the site. The Government reported that only two people had been slightly injured, but the Red Cross estimated that up to 20 had been affected by tear gas, beaten by police or trampled by other demonstrators in the rush to escape the police charge. In an open letter dated 27 January, eight immigrants, later deported, claimed that they had been beaten, sprayed with tear gas, taken to the police station ("without any motivation"), and there beaten again, refused access to toilets, left without food or blankets for 48 hours, and generally treated like criminals, although they had not been charged with any criminal offence. Expulsion orders were served against them. Eight Moroccans were moved to a detention centre for foreigners (CIE) in Valencia. One immigrant was reportedly taken from there to hospital, where he was treated while handcuffed. A trade union and the local branch of a parliamentary party protested that the Moroccans were without medical care for four days when at the centre, although they had arrived in a "lamentable state".

A lawyer for one union said that a Moroccan woman among those moved to Valencia had been unconscious for five hours in hospital as a result of the police action, before being transferred, and another was in damp clothes stained with urine - from which she had not been changed - as a result of a bladder condition.⁶⁰ The director of the CIE was reported as saying that, if they had not received medical attention, it was because they had not asked for it.

B.3.1. Ill-treatment of Roma (commonly referred to as "gitanos" [gypsies])

There are no reliable statistics for the exact number of Spanish nationals of Roma ethnicity in Spain - estimated to be anywhere between 500,000 and 800,000, of whom the majority are based in the south and south east, and in Madrid and Barcelona. The EUMC's annual report for 2000 included Roma among those continuing to experience discrimination and social exclusion.

⁶⁰ "Una de ellas se orina encima porque recientemente ha sido operado de la vejiga y la otra fue trasladada a Valencia directamente desde el hospital, donde estuvo cinco horas inconsciente y con suero debido a la carga policial". María Ruiz, lawyer of the CGT, quoted in "El Mercantil Valenciano", 25 January 2002

It noted that 25 per cent of women in prison are Roma and that they tend to receive longer prison terms (on average 6.7 years) than other women. ECRI has documented discrimination against Roma, particularly in the social and economic spheres, and particularly with regard to housing. In March 2000 CERD continued to express its concern about the position of Roma in Spain.

AI has information about a number of cases of reported ill-treatment of Roma. Just two are given here.

A family of Roma, including children

In February 1999, nine years after the event, seven National Police officers were convicted by the Court of Madrid for the illegal detention and torture of a family of Roma on New Year's Day 1990. According to reports, a family of six, including four children, were arrested at the Puerta del Sol in Madrid in the early hours of the morning, after receiving a message about an incident between a band of musicians and some street cleaners. At the same time a passer-by, who had witnessed the police intervention and objected to it, was taken into police custody. The Romani family were taken to a police station in the Centro district. The father and three children, the youngest aged 11, were placed in a cell. One officer reportedly believed that, during the arrest, his watch had been stolen, and he requested that another officer help him search the detainees.

According to the same reports, the two officers took the father into a corner, insulted him, demanded that he give back the watch, stripped him naked, put a gun to his head and beat him repeatedly. The man defecated from fear and was forced to pick up the excrement with his hands. The officers took the three children out of the cell and stripped them naked. One, aged 15, was repeatedly beaten. He took 10 days to recover from injuries in one foot and pain from bruising on the side.

The court found that the officers had detained the family illegally. It was "beyond doubt" that the officers had not personally witnessed any disturbance. The court decision stated: "They indiscriminately detained all the people of gipsy origin, including four minors below the age of 18, one of them aged 11, without the slightest investigation, and therefore without any legal justification".⁶¹ The court was also unequivocal in its condemnation of the torture of the Romani detainees. It found that they had been humiliated, threatened, insulted and subjected to

⁶¹ "Detienen indiscriminadamente a todas las personas de etnia gitana, incluidos cuatro menores de 18 años, uno de ellos de 11, al margen de cualquier indagación mínima y por tanto, de cualquier motivación legal": [Quoted in *El País*, 25 February 1999]

systematic assault. The beatings caused severe harm to their physical and mental integrity and showed an “absolute disregard of their rights” beyond any sense of proportionality.⁶²

The two main defendants were sentenced to a non-custodial sentence of six months’ detention (*arresto*) each and seven years’ disqualification from public service (*inhabilitación especial*) for the crimes of torture and illegal detention. They also were ordered to pay a total sum of two million pesetas to the father and child who had been beaten. Another officer was sentenced to a non-custodial two months’ detention (*arresto*) on a torture charge, for not intervening to prevent the acts of torture that he witnessed. Three other officers were suspended for six years, one for each of six crimes of illegal detention and were ordered to pay compensation to each of the six family members of 200,000 pesetas. A seventh officer was convicted of breach of duty (*prevaricación*) to seven years’ disqualification from public service (*inhabilitación especial*). The latter, who had been in charge of the police station that night, reportedly ordered the release of the Roma in order to conceal from judicial scrutiny the assaults that had been made on them.

Some more recent cases of police ill-treatment, or alleged ill-treatment, have been documented by *Ararteko*. The Basque Ombudsman’s office was approached by the Romani organization *Gao Lacho Drom*, owing to concerns that Roma in the Vitoria area of Bilbao (Basque Country) were being harassed by *Ertzaintza* patrols and that some officers were showing racist conduct towards them. The association expressed concern about what it considered to be the persecution of its leading figure, the president of *Gao Lacho Drom*, Bartolomé Jiménez Gracia, as well as about several separate incidents.

Bartolomé Jiménez Gracia

On 23 October 1997 five police officers approached a young Rom in Vitoria and asked for his vehicle documentation. The youth either could not, or would not, supply them. He was then asked for his personal identity papers, but again, refused to supply them, or did not have them with him. While he was being questioned a crowd of the youth’s friends and relatives gathered. Among them was Bartolomé Jiménez, president of the Romani organization, *Gai Lacho Drom*, who reportedly tried to calm the crowd. After the youth was arrested tension grew and the officers drew out their truncheons. At this point the president of *Gao Lacho Drom*, who was trying to intervene with the officers, was struck by a single blow of a truncheon on the back of the knee and taken into custody.

Versions of the incident differed. During the public row which followed the Interior Department of the Basque government issued a statement praising Bartolomé Jiménez for trying to calm the crowd but adding that he had subsequently pushed one of the officers and had attempted to obstruct them. *Gao Lacho Drom*, however, described the incident as “racist”.

⁶²“Mediante un registro humillante, amenazas, insultos y la realización de una agresión sistemática, con golpes que produjeron el quebranto de la integridad física de los detenidos, no hay duda de que fueron sometidos a condiciones que les intimidaron y violentaron su voluntad, con desprecio absoluto de sus derechos y fuera de cualquier proporcionalidad”. (ibid)

According to the Romani association, a woman in the crowd, who was suffering from a terminal illness, was assaulted by one of the officers, and it was at that point that their president had intervened, saying “*No la toques. No ves en que estado se encuentra?*” (“Don’t touch her. Can’t you see what condition she’s in?”). He was then beaten by several officers, arrested and handcuffed, stripped and placed in a cell in a police station and only later taken to hospital, where his leg was immobilized in a plaster. He was taken back to the police station. After being released, he was unable for a while to bear weight on his injured leg.

Efforts were subsequently made by both the Basque Government and the Romani community to bring about closer collaboration and gifts of reconciliation were formally exchanged. However, in 1999 the channels of communication that had been established with the *Ertzaintza* reportedly ceased and there were further complaints of racial harassment and ill-treatment.

NOTE

Although not addressed in this report, it should be noted that AI has in the past expressed concern about the lack of basic humanitarian care for newly-arrived immigrants in and around point of entry holding facilities, and about reports that such facilities were grossly inadequate. The Spanish authorities have sought to provide some improvement to these in the Campo de Gibraltar, with the building of a prefabricated first aid module (*modulo de primera asistencia sanitaria*), set up in the port of Tarifa. Financed by local government and administered by the local Red Cross, the module had room for 150 people, with a washroom, toilets, hot water, eating room, etc.⁶³ An AI delegate, who visited the module shortly after it was established, was informed that the vast majority of those treated there were sub-Saharan Africans.

Concern, however, was expressed by local NGOs about Moroccan immigrants who, owing to a 1992 agreement between Spain and Morocco, were immediately returned to Morocco after being detained. There were allegations that many were sent to Algeciras, and from there to Morocco, via Ceuta, in the wet clothes in which they had arrived, even though their jeans could hide severe burns as a result of the chemical mix of salt water and petrol - burns which would only gradually become apparent. Sometimes, if a Civil Guard noticed an injury, a doctor would be called, but no automatic and immediate medical examination was available to Moroccans. AI believes that newly-arrived undocumented immigrants, detained at point of entry, must be treated in accordance with international standards. All such persons, including Moroccans, should be given an automatic medical examination as soon as they arrive. All such persons should be given dry clothes, warm food and drinks and access to legal and linguistic assistance.

⁶³By the summer of 2001 it was apparent, however, that the module offered inadequate facilities for the numbers arriving. AI has received reports that, since then, some undocumented migrants are being transported to a military building in the nearby Isla de las Palomas, where conditions are poorer.

AI was also concerned about reports, dating from October 2000, that hundreds of undocumented Moroccans were deported to Ceuta, and from there to Morocco, in conditions that infringed international standards, including maritime regulations on safety at sea. The Moroccans were reportedly held, sometimes handcuffed, inside police vans or buses in the holds of ferries. They were reportedly overcrowded and at risk of injury from the movement of other vehicles in heavy seas, subject to great heat and engine noise, and without access to safe escape routes in time of danger. Some ferry captains alleged that police officers had pressured them to accept the Moroccans as cargo rather than as passengers, in contravention of the International Convention for the Safety of Life at Sea (SOLAS), which prohibits the transport of passengers in such conditions. However, some captains refused to allow the practice of shipping the Moroccans in this way, and in October 2000 the Algeciras port authorities ordered that the practice be ended. The Moroccans were subsequently accommodated in separate rooms or in the passenger sections of the ferries.

Figure 1 A Civil Guard and his mother-in-law tend a sub-Saharan baby - one of a group of Africans newly arrived on the beaches in the Campo de Gibraltar. Civil Guards, with insufficient resources at their disposal, have paid out of their own pockets to bring food to immigrants and sometimes risked their lives to rescue them from treacherous seas. [*Javier Bauluz*]

B.4. Arbitrary detention and ill-treatment of foreign nationals

According to Principle 2 of the Body of Principles, “arrest, detention or imprisonment shall only be carried out strictly in accordance with the provision of the law and by competent officials or persons authorized for that purpose”. AI is concerned that, in Spain, as in some other countries, police officers have sometimes abused their powers by arbitrarily detaining persons of foreign appearance in order to harass or physically ill-treat them. AI is concerned that foreigners, and particularly undocumented foreign nationals, are especially vulnerable to this form of abuse.

By “arbitrary detention” AI here refers to a form of illegal detention carried out by law enforcement officers, either as a form of harassment or punishment in itself, or in order to carry out physical ill-treatment as well. In the cases known to AI, the victim has been taken to a deserted area, or the outskirts of a town or city and has been beaten. The victims have sometimes been left to find their own way home, and have rarely been taken to a police station, where any arrest should be registered.

In the case of Mamadou Kane (see below) the public prosecutor argued that immigrants or foreign nationals were particularly vulnerable to arbitrary detention because of a sense of insecurity in relation to their legal status and because, in the unlikely event that a complaint was

filed, the word of police officers was likely to be taken more seriously than that of a “black”. In fact, publicity around the 1997 case of Mamadou Kane focused attention on previous similar cases in Vigo (Galicia), where Mamadou Kane lived and worked as a street vendor. For instance, the representative of a local NGO was reported as saying that the case was not an isolated one and that Local Police officers had abducted a number of other Africans, including several Senegalese nationals, the majority of whom were too afraid to make complaints. The practice was known by the word “*paseillo*” (being taken for a ride) and was carried out by a small but determined minority of officers.⁶⁴ Some immigrants confirmed that the practice was known among them, and carried out to insult and beat them. With regard to the Vigo area, it was seen to be related to a crackdown on foreign street vendors after street vending had been prohibited (without due authorization) by a by-law (*ordenanza municipal*) of 23 December 1995. In 1996 a judge acquitted a street vendor on the basis that his resistance to illegal arrest by eight Local Police officers had been justified. Following publicity about the Mamadou Kane case, reports of arbitrary detentions of this kind became more rare in the Vigo area.

Allegations of arbitrary detention of immigrants were noted in the San Francisco (Bilbao) reports and have also been received from other parts of Spain, including Barcelona.⁶⁵ The Supreme Court (in the Mamadou Kane case) referred to several similar cases of conviction of Local, National, and *Ertzaintza* officers and Civil Guards for arbitrary arrest in 1997, 1995 and 1993. Arbitrary, or illegal, detention (*detención ilegal*) is punished by Articles 163-167 of the Penal Code of 1996, with Article 27 referring specifically to illegal detention by public officials. Article 20 of the law on protection of citizen safety (see B.3) explicitly states that identity checks which cannot be carried out on the spot must take place in nearby police stations.

Two of the most serious cases affecting foreign nationals and investigated by AI are listed below in chronological order.

Sallam Essabah

Sallam Essabah, an agricultural worker of Moroccan origin, living in Orihuela (Alicante), was abducted and severely beaten by Local Police officers on 26 December 1995. He was also allegedly racially insulted. In a complaint, he alleged that, early that same day, he had been beaten up and left unconscious by two Local Police officers in a deserted area on the outskirts

⁶⁴A coordinator of the *Centro de Información para Trabajadores Extranjeros* (CITE), quoted in *Faro de Vigo*, 19 March 1997.

⁶⁵In one recent case, dating from 2001, “A.B.” (whose real name is known to AI) was allegedly abducted by plain clothes officers, taken to a motorway, beaten and abandoned on the road. A.B. claimed that he was racially abused and threatened with death. He received hospital treatment for his injuries and lodged a judicial complaint. Because of anxiety about publicity affecting judicial proceedings, AI was asked not to describe this case in any detail at the current time. AI feels that this is a serious case that deserves to be widely known.

of town. The motives appeared to have a racial connection. He stated that, at about 2.30am on 26 December, he left a bar and was walking home along the Calle Valencia when he was stopped by the two officers and asked for his identity papers. He showed his work permit, telling them that he worked at Citromar, a store that sold horticultural products. The police officers said he should have stayed in his own country and called him a thief (“*ladrón*”). They punched him in the face and body, after which they took him, firstly, to the Local Police station and then to the National Police station to check his identity and whether he had a criminal record.

The National Police confirmed that he had no criminal record and told him he could go. The two Local Police officers told him they would take him home, but once he was in the patrol car they renewed their assault on him, beating and kicking him all over his body. He lost consciousness. When he awoke he found himself lying in a place called the Pantano de Torremendo, on the outskirts of town. He was naked and missing his wallet, which contained about 37,000 pesetas, his work permit, his leather jacket and his new shoes. He walked towards Hurchillo, where some residents helped him and called the police. A police patrol arrived, followed by a car containing the same officers who had abducted, beaten and abandoned him. The police officers in the first patrol car took him home. He was later taken by friends to the Local Police station to register a complaint, and from there to the Hospital Vega Baja in Orihuela.

Medical certificates dated 28 and 29 December 1995 confirmed that Sallam Essabah had been admitted to hospital on 26 December, suffering from multiple injuries as a result of being beaten, particularly in the stomach, chest and lumbar region. The reports referred to grazing and bruising on the left side of the body, as well as to pleural and abdominal effusion and haematoma. Sallam Essabah was advised by doctors to see a urologist for kidney tests and told to take a complete rest of between 60-90 days. He was also told he would need further treatment.

The two Local Police officers denied the Moroccan’s allegations. Their version contained apparent inconsistencies, particularly in relation to the behaviour of the Moroccan, which, in their description, seemed highly contradictory. They stated that, on 26 December, they had been called to a street where a man appeared to be drunk and disorderly. The man, Sallam Essabah, had no papers on him and was therefore taken directly to the National Police station for identification. He went with them peacefully, and they did not hit him. They did not understand him properly because he was speaking half in Arabic. At the police station he rolled drunkenly on the ground, shouting. They offered to take him home. Once in the Hurchillo area, he said he wanted to get out of the car. They asked him if he was sure he lived there because there was no sign of human habitation. He insisted that he did. At 1.30am he got out of the car. He was wearing all his clothes and had all his belongings. He thanked them for the lift and the officers returned to Orihuela.

The two officers were charged with the crime of illegal detention and the offences of inflicting injury and petty theft. On 21 December 1998 the Court of Alicante found the officers guilty of illegal detention and inflicting ill-treatment, but acquitted them of theft. The court sentenced them to a non-custodial prison term of two years, four months and one day’s imprisonment (*prisión menor*) for illegal detention and a non-custodial term of 10 days of

imprisonment (*arresto menor*) for ill-treatment. They were also sentenced to pay court costs and compensation to Sallam Essabah of 150.000 pesetas (illegal detention) and 75,000 pesetas (ill-treatment).

Mamadou Kane

Mamadou Kane, from the region of Touba in Senegal, had been living in Spain for 10 years and had a residence permit. He sold merchandise on streets and beaches. Based in Vigo, he returned every year to Senegal during the winter months to see his family, which he supported. In July 1996 he was arrested by officers of the Local Police and charged with “disobedience to authority” in connection with street trading. He claimed that, after July 1996, he was harrassed by the Local Police, who were continually asking for his identity papers.

Figure 1 Mamadou Kane [*private*]

On 16 March 1997, at about 5.30 pm, Mamadou Kane was on the beach at Samil (Vigo), talking to another Senegalese and two Spaniards. Two Local Police officers approached and asked him for his papers. He replied that he had a residence and work permit, but was asked for his identity card or passport, which he did not have. The officers called a patrol car, which contained two other officers. The first two officers placed him between them in the rear of the car. They said they were taking him for identification to the National Police station of López Mora. However, instead of going to the station, they took a route that led up to Beade and from there to a hilly area near Vigo University campus at Marcosende.

Mamadou Kane claimed that, when he asked where he was being taken, one of the officers retorted: “You shut up, we’re the ones giving orders around here, you idiot!” The two officers in the rear seat then began to punch him on his right and left side, while he attempted to defend himself. The other two officers shouted insults at him, some being racial in nature, such as “Black shit!” He claimed they also said: “You lot, you’re shits. The Spanish government is totally to blame for letting you into the country. Go back to your own country and get on with your tribal killings”.⁶⁶

The police abduction lasted about an hour, and Mamadou Kane stated that, at one stage, he feared for his life, since the officers also threatened to kill him. The officers then said they would take him home, but he insisted on going to the police station, in order to lodge a complaint. He was told that if he brought a complaint he would be expelled from Spain. However, he was driven to the National Police station, arriving there at about 7.15pm. His residence permit was

⁶⁶“*Tu te calles, nosotros somos los que mandamos, gillpollas!*” “*Negro de mierda!*”
“*Vosotros sois una mierda; el Gobierno español tiene toda la culpa por dejaros entrar en el país; marchaos para vuestro país y mataros entre vuestros tribus.*”

found to be in order but the Local Police asked for his name to be entered in the register for illegally selling merchandise in the Paseo de Samil, for refusing to identify himself and for breach of the peace. He was then released and returned home. Some hours later, after seeing a lawyer, he lodged a judicial complaint. At the Xeral-Ciés hospital he was given a medical examination and a medical report refers to bruising on the back and head. Mamadou Kane stated that, after the abduction and beating, and in view of previous harassment, he was in continual fear of something similar happening to him again. He suffered from continual nervous headaches and felt unable to go out unless in the company of friends.

The Local Police categorically denied that Mamadou Kane had been arrested at 5.30pm., and that the officers had driven him outside the town to beat him up. According to a police statement, he had been arrested later, at about 6.45pm, after having been seen selling merchandise on an unauthorized part of the beach. They stated that, because of his insulting behaviour, they called a patrol car. He was then taken straight to the police station, arriving there half an hour later, at 7.15pm. However, several eye-witnesses corroborated Mamadou Kane's allegations. The city council refused to contemplate disciplinary proceedings against the officers (one of whom had a criminal record).

On 19 April 1999 the Court of Pontevedra convicted all four police officers to custodial sentences for illegal detention and two for ill-treatment, but found insufficient evidence that the officers had racially insulted Mamadou Kane. The judgment cited, among others, a number of international norms, such as Articles 9 of the UNDHR and the ICCPR and Article 5.1 of the ECHR. One officer was sentenced to four years' imprisonment, and three officer to three years' imprisonment. They were also sentenced to between 10 and eight years definitive disqualification from public service (*inhabilitación absoluta*) and to pay Mamadou Kane compensation.

On 18 June 1999 an appeal was lodged with the Supreme Court, which was asked to re-examine the failure of the first instance court to apply the aggravating circumstance of racial motive under Article 22.4 in combination with Article 66.3 of the Penal Code. The appeal pointed out that, as the aggravating circumstance referred to in Article 22.4 was new, there was little significant jurisprudence. However, the case pointed to a set of criteria by which the aggravating circumstance could be judged; specifically, that Mamadou Kane, who alleged that racist insults had taken place, was described as a highly credible, firm and consistent witness by the first court; that one officer had shown disrespect to one of the other witnesses; that ill-treatment inside a police vehicle was invariably accompanied by verbal aggression; that the victim was a black immigrant, etc. The appeal listed a number of proven facts leading to the conclusion that: "the reason that the officers decided to take the victim to an isolated area was his condition as a foreign immigrant of black race, which led the convicted [officers] to suppose that the crimes would not be reported, owing to the sense of insecurity that foreign immigrants generally have with regard to possible expulsion from the country".⁶⁷ The only reason why, after over an hour

⁶⁷ "...se llega a la conclusión que la causa de que los Agentes decidieran llevar a la víctima a un monte fue su condición de inmigrante extranjero de raza negra, lo que hizo suponer a los condenados que los hechos no serían denunciados, debido al sentimiento de inseguridad que los

in the police vehicle, he was finally taken to the police station was because he himself insisted on lodging a complaint. The officers then had no alternative but to rely on their greater credibility in the eyes of the court compared to the allegations of a black man. (The attempts that were in fact made by the local authorities to discredit Mamadou Kane, through a campaign of disinformation, are described in section D).

On 12 July 2001 the Supreme Court upheld the convictions against the four officers, who had remained in their posts following the verdict by the first instance court. The court did not allow further appeals, implying that the officers would face prison sentences and immediate expulsion from the service, but suggested that three officers might benefit from a “partial pardon” which would open the way to a non-custodial sentence. The court did not accept that the aggravating circumstance of racial motive could be proved.

inmigrantes extranjeros generalmente tienen al respecto de una posible expulsión del país”
(*Recurso de casación a la Sala Segunda del Tribunal Supremo*)

B.5. Ill-treatment of children

Figure 1 Unaccompanied children in Ceuta. [*Julián Rojas*]

AI is concerned that unaccompanied Moroccan children in Ceuta and Melilla have been ill-treated in the course of systematic expulsions, carried out by police and private security officers, from the two Spanish enclaves in Morocco. In the view of AI, the Spanish authorities have not upheld international standards on the care and protection of children. AI believes that the autonomous cities of Ceuta and Melilla must be given the resources to care for each child, and to examine each case thoroughly and on an individual basis - ensuring also that the child's views are taken into account before any decision to expel that child is taken.

Most of the reports received by AI about ill-treatment of children, either by police officers or by supervisory staff or teachers, relate to unaccompanied children of North African origin, often originating from poor or broken homes in the north of Morocco. Foreign children are to be found in many parts of Spain, including Cataluña, the Basque Country, Madrid and the Canary Islands. AI's concerns have, however, so far focused mainly on the situation in the Spanish North African autonomous cities of Ceuta and Melilla.

There are four main areas of concern for AI with regard to the situation of the children in Ceuta and Melilla:

1. expulsion of minors who are under the protection of the city authorities, without regard to due process of law or to the family situation of the individual child;
2. alleged ill-treatment of minors in the context of expulsions, by both Spanish and Moroccan officers;
3. failure to protect the children abandoned in border areas, or living in the streets;
4. alleged ill-treatment by carers or other minors and poor and degrading conditions in reception centres.

Spain ratified the UN Convention on the Rights of the Child on 30 November 1990. The Convention forbids torture and cruel, inhuman or degrading treatment of children and provides that deprivation of liberty shall be used only as a last resort and for the shortest appropriate period of time. Article 19 ensures the right to protection from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, including sexual abuse. According to Article 20 a child temporarily or permanently deprived of his or her family environment, or in

whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. Article 37 ensures the right of a child not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. In addition, this article states that: “Every child deprived of liberty shall be treated with humanity and respect ...” and “shall be separated from adults unless it is considered in the child’s best interest not to do so...” Rights to health, education, freedom of thought, expression and religion and protection and humanitarian assistance are also enshrined in the Convention. Above all, the states parties undertook to ensure that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Spanish laws and regulations prohibit the expulsion of minors unless stringent conditions are met. The law on the legal protection of minors, the *Ley de Protección Jurídica del Menor*, extends the right to education, health care and other public services to foreign minors and states that the authorities have a duty to assume the care of unaccompanied minors. Article 62.5 of the *Reglamento de la Ley de Extranjería (Ley Orgánica 8/2000 of 22 December)*, the legal provision regulating the Law on Aliens, also seeks to provide limits to the precarious situation of undocumented and unaccompanied foreign minors on Spanish territory. In its current form it establishes that, when minors have spent nine months in Spain, they should be provided with residence permits that allow them to begin to organize their lives in the country. The Law on Aliens provides that undocumented foreign minors found on Spanish territory must be delivered into the care of the competent authorities while every effort is made to find and reunite them with their families or guardians. Where this is not possible, residence permits will be granted.⁶⁸

In July 2001 there were reports that the governments of the autonomous cities of Ceuta and Melilla were seeking to modify Article 62.5 in order to exclude the two Spanish North African enclaves from the regions of Spain currently obliged to protect and care for unaccompanied foreign minors. The governments of the two cities have reportedly argued that they do not have the resources to provide for continuing influxes of minors from North Africa, and that there is a need to avoid the “Morocconization” of the Spanish cities.⁶⁹

⁶⁸*Artículo 35 (Residencia de menores), Título II, Capítulo II, Ley de Extranjería.*

⁶⁹The social affairs minister in Ceuta, Mohamed Chaib, was quoted in June 2001, as saying that if Article 62.5 was not modified to take account of the situation in Ceuta and Melilla, the influx of children into the cities could lead to their “Morocconization” and they did not have the resources or geographical area to deal with such an effect. (“... *se puede producir, se quiera o no, un efecto llamado en el caso de los menores, y puede contribuir a una marroquinización de los dos ciudades autónomas. No tenemos ni medios ni extensión suficiente para hacer frente a este tema*”).

B.5.1. Children in Ceuta

The autonomous city of Ceuta, to the west of Melilla, has a frontier post with Morocco at Tarajal. A city of about 80,000 inhabitants, of whom between 25,000-30,000 are Spanish citizens of Moroccan origin, Ceuta, like Melilla, is not recognized by Morocco as belonging to Spain. Creeping, demographic “Morocconization” is a real fear, expressed by politicians or parts of the media and population, which can partly explain antipathy to the influx of North African children. The vast majority are of Moroccan origin. In August 2001 there were reports of the arrival of a number of unaccompanied Algerian children. There have also been occasional reports about the discovery of other, very small sub-Saharan African children at the frontier area.⁷⁰

Estimates of the number of unaccompanied children in Ceuta at any one time vary but there are thought to be up to 1,000, of whom only a minority are cared for at the one reception centre for children in Ceuta, the *Centro de Acogida de Menores de San Ant3nio*. The remainder live rough - in holes in the breakwater, in port installations or underground and hillside tunnels. In June 2001 the NGO *M3dicos sin Fronteras* (MSF) noted that many of the children living rough did not have easy access to health care and were suffering from dermatological problems, such as scabies and fungal infections. They were debilitated by hunger, poor nutrition and lack of vitamins, and were easy prey to respiratory infections. Some had gall stones, a medical problem usually suffered by older people. Many were suffering from the effects of inhaling solvents.⁷¹ There have also been many reports of children being brutally attacked by adults or older minors. In April 2001, for example, a 14-year-old child sheltering under a breakwater was almost killed when the cardboard boxes in which he was sleeping were set alight.

In its July 2001 letter to the Spanish government, AI expressed concern about the widely-reported inadequacy of facilities, as well as about the poor health and physical abuse which children were known to be suffering in the streets. It was apparent that many children were unwilling to be taken to the San Ant3nio centre, where 97 minors were reportedly registered at the beginning of July 2001, when AI approached the Spanish authorities. In its recent report, MSF remarked that the centre lacked minimum standards of hygiene and was

⁷⁰Some very small children from the Democratic Republic of the Congo (DRC) have been abandoned in the streets or left by the border fence with name tags, description of nationality and telephone numbers of relatives in Spain in the hope that they will be allowed to rejoin family members there. Four-year-old Bieye Mbaki, from the DRC, was reportedly found wandering the Ceuta streets in September 1999 with a small card round his neck, and was taken to the Reina Sofia care centre for children. He was the third sub-Saharan child to be found at the Ceuta frontier within a month in 1999. Four-year-old Clarice Kipupa, also from the DRC, was discovered at the border fence that August, followed in September by another four-year-old, Mariam Makaya.

⁷¹“...muchos menores tienen problemas dermat3gicos (sarna y hongos). Su organismo est3 debilitado por la mala alimentaci3n y la falta de vitaminas. El disolvente que inhalan les seca los bronquios. Pese a su corta edad, han perdido much capacidad vital y tienen todas las papeletas para sufrir enfermedades respiratorias. Algunos tienen ya hasta piedras en el ri3n3n, algo propio de adultos ...”

infested with lice and rats. There was a shortage of beds, sheets and blankets, and there were cases of minors catching contagious diseases while staying there. On 2 July 2001 a group of about 25 Moroccan minors from the centre gathered before the office of the public prosecutor for minors (*Fiscalía de Menores*), and later went to the officer of the Ceuta newspaper, *El Faro*, to complain, among other things, that they lacked food and clothes and that some of the new Muslim educators were forcing them to pray against their will. The local authorities appear reluctant to build further reception centres on the basis that this would encourage more children to come to Spain, and prefer the option (or panacea) of “family regroupment” - tracing and relocating children with relatives in Morocco - although this policy so far has been extremely unsuccessful. Aid workers have attacked the policy, arguing that the vast majority of the children who arrive in Ceuta and Melilla cannot be supported or protected by their families, are unwanted, or abused, or have not seen their families for years.

In October 1998 three Local Police sergeants in Ceuta, Manuel Navia Fernández, Juan Antonio Espinosa Ramírez and Juan Luis Ramos Muñoz, lodged a judicial complaint with the prosecutor of Ceuta, in which they stated that there were “serious irregularities” (“*graves irregularidades*”) in the detention of undocumented Moroccan children. Such arrests and detentions were being carried out by fellow officers, on the orders of the Ceuta government administration. Also involved were members of a private security force, *Agentes de Atención Directa* (AAD). The AAD belonged to the firm PROCESA, and had been contracted to help the police officers with detention and expulsion of minors. The officers claimed that, following arrest, some children were taken to the National Police station for registration - as required by law - but others were taken by the Local Police or AAD personnel to Local Police garages, after which they were placed in a police van, driven to the frontier post of Tarajal and there handed over to the Moroccan police. Children - sometimes no older than five - were detained and expelled in this way. They could be held for between four and six hours in the police van, in the company of adult detainees, prior to reaching the frontier post of Tarajal. The officers claimed that the Mitsubishi van, then used daily for confiscating motorbikes and mopeds, or fish and vegetables confiscated from illegal street sellers, lacked the lack of basic requirements of security, hygiene and comfort. It had no seats and no windows, lacked ventilation and smelled strongly of petrol, oil and fish. On other occasions the children were transported in ZETA police cars. The police who detained and escorted them were uniformed, and had firearms, shackles and defensive equipment. The AAD personnel had no firearms but carried police truncheons.

The three officers claimed that they had previously reported the situation to their superiors but that no action had been taken. A subsequent complaint by one of the three officers, lodged with the head of the Local Police, concerned his discovery of two Moroccan children of eight and 11 years who had been held in a van inside the police garage for almost one and a half hours by the time he heard them striking the sides of the van and crying out for water.⁷²

⁷²Juan Luis Ramos lodged a complaint on 23 April 1999. He had heard the children when passing through the Local Police garage. They were being held in a new Mercedes van, used to

The three officers argued that the conditions under which the children were held infringed the Spanish Constitution and Spanish laws and the international treaties which Spain had ratified, notably the UN Convention on the Rights of the Child.

After the officers had complained to the prosecutor, further allegations about ill-treatment of children in Ceuta emerged. On 19 November 1998 two of the officers held a joint press conference with a children's rights organisation, the *Asociación para los Derechos del Niño y de la Niña* (PRODENI) in Málaga. The latter also brought to the attention of the Spanish authorities allegations, made by the police officers, about physical ill-treatment of children by certain colleagues, such as beatings with truncheons, and referred to media reports about sexual abuse of the children by one particular officer. On 12 January 1999 four NGOs, and the parliamentary political party *Izquierda Unida* (IU) filed a criminal complaint against two government representatives for Ceuta, the head of the Local Police of Ceuta and two local police sergeants, whom they accused of illegal detention and breach of duty (*prevaricación*).⁷³ The complaint reiterated the accusations of the three police sergeants, who were subsequently threatened and victimized (see section D). The complaint was mentioned in the 1999 annual report of the Spanish Ombudsman. The Ombudsman, who had also investigated the complaint by the three officers, stated that this had confirmed that Ceuta's Local Police were proceeding "with relative assuinity", to pick up Moroccan children who daily crossed the frontier and return them to Morocco. It also underlined that, even taking into account the special frontier characteristics of a city like Ceuta, the "Spanish authorities are obliged to ensure the protection of any minor on Spanish territory, independently of nationality".

Following the action by the three officers, the practice of detaining and expelling minors in vans was discontinued by the Local Police force. Allegations of police ill-treatment also tailed off. In March 1999 the Attorney General (*Fiscal General del Estado*) ordered that the practice of such direct expulsions by Local Police officers be brought to an end.

On 20 July 2001, following reports that the autonomous governments both of Ceuta and Melilla were seeking exemption from legislation that protected unaccompanied foreign children, AI wrote to the Spanish authorities to express its concern that any such exemption could lead to a resumption of the former practice of irregular expulsions that were sometimes accompanied by police ill-treatment and, in almost all cases, resulted in effective abandonment of the children. AI referred to Spain's obligation to protect all children on its territory, and in a press release on the same issue, urged that: "*Ceuta and Melilla must be given the resources to care for each child, and to examine each case thoroughly and on an individual basis - ensuring also*

transport detainees. The children were crying "*Jefe, agua!*" *Jefe, agua!*" ("Boss, water!") He brought them two cans of Coca Cola from the drinks machine in the garage. The children told him they had been arrested on the street and, by that time, had been shut in the van for at least one hour and 20 minutes.

⁷³*Asociación Pro Derechos Humanos (España), Asociación Pro Derechos Humanos (Andalucía), Asociación Contra la Tortura and SOS Racismo.*

that the child's views are taken into account - before any decision is taken to remove that child from Spain".

AI also referred to the widely-reported inadequacy of facilities for the care of unaccompanied children - in Ceuta in particular. It referred both to the poor health and physical abuse which children suffered while living in the streets, port installations and underground or hillside tunnels, and to the apparently inadequate conditions in Ceuta's only reception centre for minors.

Physical ill-treatment at the centre had also been reported. AI learned of one case relating to a 13-year-old child called Mohamed Garbagui, who filed a complaint with the DGP in Ceuta alleging that, in 26 June 2000, he had been arrested on the street and taken by a Local Police patrol to the San Ant3nio reception centre. Shortly afterwards he was transferred by two male carers, whom he named, to a punishment cell, where he was stripped, beaten and slapped. He claimed that a mark on his forehead had been inflicted by the carers. After the beating he managed to escape and was taken by an NGO representative to a clinic, where he was treated for his injuries. On 29 June, in the company of the same representative and an interpreter, Mohamed Garbagui filed a fresh complaint with the investigating magistrate of Court No. 2 in Ceuta. According to the new complaint, Mohamed Garbagui had, after lodging the earlier complaint, again been placed in the punishment cell of the San Ant3nio centre. He was beaten with a stick and left without food - it is unclear for how long. A pillow was confiscated and he was forced to lie on the floor. Again he escaped, and began to live on the street. In July 2001 AI asked the Minister of Justice for information about the status of the complaint but by March 2002 had not received an answer.

There have been other reports of children being bullied at the centre by older minors. There have also been disturbances involving nearby residents. In 2000 the *Fiscalia de Menores de Ceuta* opened an investigation into allegations of sexual abuse of at least 12 minors living at the centre. No further details are known about this investigation at this stage.

B.5.2. Children in Melilla

Approaching a population of 70,000, Melilla shares a border with Morocco. There is a large minority Muslim population. Until recently the situation of undocumented foreign children was widely seen as more favourable than that prevailing in Ceuta. Many children have received residence permits, and several centres, receiving over 100 minors, exist in the city, compared to just one in Ceuta.

However, the possession of residence permits does not appear to have prevented minors from being included in successive waves of new expulsions, which began on 27 July 2001. On that date, four children between the ages of 11 and 17, all of whom were residing in centres and in receipt of residence permits, were told to go to a juvenile department of the Melilla government officers (*Area del Menor*) where Local Police officers informed them that they were to return "home" and be reunited with their families. Several of the children had reportedly lived for more than five years in Melilla. One 16-year-old had lived in Melilla for 10 years. A

fifth child, aged 16, who had been forcibly returned to Morocco in the past, but who had obtained a residence permit about seven months earlier, claimed that he had been “slapped around hard” by the Spanish police before being taken to the border at Beni Enzar. None appeared to have been reunited with their families or other guardians and they found their way back, on their own, to the city. The mother of one of the children, Aomar Charcamal, was known to be suffering from a serious illness. She habitually lived by begging in Melilla.

Other expulsions followed, and by January 2002 some 44 operations of expulsion of children had been recorded. For example, on 2 and 3 August 2001 several unaccompanied children were expelled. Most returned, but one, 14-year-old Moasin, did not. The Melilla-based children’s rights organization, the *Asociación Pro Derechos de la Infancia* (PRODEIN) reported that he was in a poor physical and moral state, and that he had remained at the border fence, making repeated attempts, day and night, to return across it. What has happened to Moasin is not known to AI. On 30 August 2001 four minors, three aged 17 and one aged 14, were expelled from Spanish territory and handed over to Moroccan police. They were reportedly ill-treated by the Moroccan police, who beat them on their hands with a truncheon and held them all day in police cells before releasing them at night. On 4 September they managed to get back across the frontier, and returned to the reception centre of Fuerte de la Purísima. The following day a Local Police patrol, with uniformed and armed police again took the minors, together with three others. One of the latter, Mohamed Fath Al-Lal was reportedly handcuffed and punched hard in one eye. All claimed they had received no legal assistance before or at the time of their expulsions, that they had not been given a hearing and that no relative or Moroccan social service representatives was waiting for them at the frontier.

On 31 August 2001 PRODEIN, and another NGO, the *Asociación Pro Derechos Humanos de Melilla*, filed a complaint with Magistrates Court (*Juzgado de Instrucción*) No. 1 of Melilla about continuing expulsions of children. They informed the judge that earlier that morning a group of 10 minors, all staying at Fuerte de la Purísima, went to the PRODEIN office because they were frightened that they would also be expelled. They told PRODEIN that one of the centre’s educators had warned them that the expulsions were continuing. They were therefore afraid to return to the centre and asked PRODEIN for protection. The organization requested that they be given legal protection. On 5 September 2001 PRODEIN also lodged a complaint with the National Police in Melilla about the continuing expulsions, claiming that different Moroccan minors had been expelled 29 times since 27 July 2001. All had been under the protection of the Melilla authorities. They had all shortly afterwards returned to Melilla, claiming to have been abandoned and to have been physically ill-treated. The opening of judicial investigations did not prevent expulsions continuing.

On 31 October 2001 two Moroccan minors, Marzok Abderrazak Massira, aged 15, and Farid El Cheik, aged 17, were reportedly detained by National Police in Melilla, handcuffed and taken to the frontier, where they were handed over to the Moroccan police. Both alleged they were subjected to ill-treatment by the Moroccan police. Marzok Abderrazak Massira had lived in Melilla for six years. He had a residence permit and was attending school there. Both minors returned to Melilla shortly afterwards, on 2 November. One told PRODEIN that he had seen a Spanish police officer giving a Moroccan police officer an envelope; that he had seen it being

opened in the Moroccan police station at Beni Enzar and that a “bundle of bank notes” came out. The second minor confirmed the story. Both also claimed they had been beaten repeatedly with rubber-covered cables. A complaint was lodged by PRODEIN with a prosecutor in Málaga on 2 November.⁷⁴

Another group of minors from various reception centres were expelled on 18 December.⁷⁵ One of these, Amin Sghir, aged 13, returned to Melilla and told PRODEIN that he had been taken to the National Police station, where officers did not allow him to speak or to read the papers that they wanted him to sign because they were “in a hurry”. He said that he and the other children were driven by police car to the frontier, accompanied by two plainclothes officers and two uniformed officers carrying firearms. They were handed over to the Moroccan police at the customs post and transferred to a room in the Beni Enzar police station. No family member of Moroccan social services representative was present. An officer allegedly slapped him twice and told him to go away, and that he did not want to see him again at the frontier. He and the other children were abandoned in the street. Amin Sghir was attending school in Melilla and has a relative there.

Other minors, such as 17-year-old Ali Abderrahim Maadi, who had a residence permit, confirmed that they had not been given the opportunity to be heard when taken to the National Police station and he had been made to sign a pile of documents which he was not given the opportunity to read. He claimed he had been taken from the Avicena reception centre to the police station in order to make “a routine statement”, and was told he would then be taken “to court”, when in fact he was taken, in handcuffs, to the frontier. He also claimed he was verbally abused while being taken to the frontier, with such phrases as “You’re going to eat shit” (“*Te vas a comer mierda*”).

Another child, Karim Bouitali, aged nine, from the Avicena reception centre, was among those expelled. Karim was reported to have been seen abandoned, in pouring rain, at the frontier at 7.20pm on 18 December, weeping, drenched and numbed with cold, clutching at the border fence. He was within sight of Spanish police officers on duty at the frontier, who were reportedly disturbed by the sight. PRODEIN members attempted to bring him fresh clothes and find him shelter, but by that time he had disappeared from view. He returned to Melilla eight days later, on 25 December.

⁷⁴*Fiscalía de la Audiencia Provincial de Málaga, Destacamento de Melilla - Sección Menores.*

⁷⁵These were Abdali Mhite, aged 13, from the Avicena centre; Karim Bouitali, aged nine, from the Avicena centre, Ali Abderrahim Maadi, aged 17, from the Avicena centre; Amin Sghir, aged 13, from the Fuente Purísima centre; Mohamed Fath-Al-Lal, aged 13, from the Fuente Purísima centre; Quali Batali, aged 17, from the Lucas Lorenzo centre; Hicham Buchuafa, aged 13, from the Lucas Lorenzo centre and Mohidin Azazi, from the Hogar del Puerto centre.

In conclusion, PRODEIN claimed there was a pattern in the way in which the expulsions of children were carried out. The children were taken by police officers from reception centres to the National Police station. They were not informed that they were to be expelled. They were not allowed to exert their rights to a hearing to determine the legality of the expulsion. They had no legal assistance. They were taken to the frontier in police cars, and by armed and uniformed police. They were handed over to the Moroccan police at the customs post. They were not received by any family member or Moroccan social services representative. They were then abandoned in the street - a particularly serious problem for smaller children.

On 4 March 2002 there were reports that most of the 40 minors then staying at the Fuerte de la Purísima centre - children between the ages of 13 and 17 - had gone on hunger strike to protest against the policy of family regroupment, which they claimed was not working, because no relatives were awaiting them on the other side of the border. They also claimed they were now not receiving residence permits after the legal limit of nine months had expired, and that some educators at the centre were beating them.

B.6. Ill-treatment of adult immigrants during expulsion procedures and in detention or reception centres

AI is concerned about reports of physical ill-treatment during forcible expulsions and in detention or reception centres and about the practice of using adhesive tape to restrain persons being returned from Spain. It is also seriously concerned about allegations made by some persons that they had been ill-treated by Civil Guards at the frontier between Spain and Morocco.

B.6.1. Use of sedatives or restraints during forcible deportations

In June 1996 103 people from different African countries were expelled from Melilla and Málaga in Spanish military aircraft. Fifty of them, including some known asylum-seekers, were deposited in Guinea-Bissau, where they were immediately detained in the Segunda Esquadra prison where some were beaten. The Spanish government admitted that some of those expelled were given water containing sedatives during the flight. AI also received reports that they were handcuffed in the aircraft and that some were beaten by Spanish police officers. AI noted that in the three months since their imprisonment in Guinea-Bissau Spain had made no effort to help those expelled, many of whom were reportedly ill, malnourished and penniless. On 23 September Ahire Naruna Awaifo, a 25-year-old Nigerian, was shot and killed by police in Bissau during a violent demonstration. He and 44 other Africans expelled with him were protesting against the way they had been treated in Spain and Guinea-Bissau. AI called on the governments of Spain and Guinea-Bissau to respect their treaty obligations on *non-refoulement* of persons to countries where they might suffer serious human rights violations and called for a full inquiry into the allegations of ill-treatment. The UN High Commissioner for Human Rights had also declared the expulsions to be of great concern. In July 1998 a Málaga court reportedly closed the judicial inquiry into the expulsions with a decision that there was no criminal charge to answer in existing Spanish criminal law. The court accepted the truth of the main accusations made by NGOs such as AI, and admitted that the action was legally questionable and could have infringed administrative regulations.

AI remains concerned about reports of individual cases of ill-treatment during expulsions and the practice of using adhesive tape to restrain persons being deported. It is also concerned about reports that some individuals have been ill-treated pending a decision on whether they should be expelled. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) and the Spanish Ombudsman have also expressed concern about ill-treatment in holding areas or in the course of deportation attempts. During its 21-28 April 1997 visit to Spain, the CPT met foreign nationals at the detention centre for

foreigners in Málaga.⁷⁶ Several of these told the delegation that they had been assaulted by National Police offices on police premises at Málaga Airport after an attempt to make them board an aircraft had failed. Some claimed they had also been assaulted before being taken to the aircraft. The CPT noted that two of the people interviewed displayed conditions, such as persistence of pain upon movement or palpation, consistent with their allegations of having received blows with batons, respectively one and four weeks previously. However, it did not find the relevant medical records kept by the police doctor very helpful. The CPT stated that, although police officers may on occasion have to use force in order to effect the removal of a foreigner subject to an expulsion order, “the force used should be no more than is reasonably necessary; in particular, it would be entirely unacceptable for such persons to be physically assaulted by police officers as a form of persuasion to board a means of transport or as punishment for not having done so”. The CPT added that to gag a person was a highly dangerous measure.

The CPT noted that the collective expulsion of foreigners from Spain had recently been examined by the Spanish Ombudsman, “who was very critical in particular of the technique of binding persons using adhesive tape to cover nearly all their body, including the mouth”. In the English language version of its response to the report, the Spanish government noted that: “The means of coercion used by the agents of the State Security Corps and Forces to carry out the expulsion of foreign citizens are those reasonably necessary to place a person in a plane if displaying slight resistance, and those methods normally consist of the use of irons and those physical compulsion measures that maintain respect for the constitutional rights. Should the behaviour alteration be serious, the Judicial Authority is informed in order that it may authorize, if necessary, the administration of tranquillizers under medical supervision, to prevent that the violent attitude of the person concerned may be detrimental for himself or for third parties”.⁷⁷ Use of adhesive tape was not specifically mentioned, but it seemed clear that this was still being used during expulsion proceedings.

The annual reports submitted by the Spanish Ombudsman to the *Cortes Generales* contain a number of allegations of ill-treatment during expulsion proceedings. From these it can be seen that allegations of ill-treatment refer not only to police officers but to private security guards employed by airlines, or to police officers who fail to act while on duty when security guards are using excessive force. The report for 1999, published in 2000, refers to such a situation.⁷⁸ According to the complaint studied by the Ombudsman, a woman (unnamed) who had refused to embark on a flight at Barajas Airport, Madrid, was beaten and immobilized with adhesive tape. Passengers and the flight captain noticed that she was covered in tape. The

⁷⁶CPT/Inf(98) 9(EN), published on 19 May 1998.

⁷⁷CPT/Inf(98) 10.

⁷⁸Ombudsman reports do not refer to individuals by name. The case quoted here is to be found in the publication: “*Defensor del Pueblo, Informe anual 1999 y debates en las Cortes Generales*”.

captain refused to allow her on the flight. She was returned by the guards to the airport corridors, where they continued to beat her. She was not offered medical care, although she had requested medical attention from police officers on duty in the room where she was taken. The next day the security guards returned, accompanied by others. Seeing them approach, and fearing another attempt at forcible deportation, the woman began to take off her clothes. The guards beat her again and immobilized her from head to toe in adhesive tape. The report notes that, in the process they tore out clumps of her hair. The woman was finally placed on a flight and returned to her country of origin. The Ombudsman raised the issue with the DGP and was told that the *Jefatura Superior de Policía de Madrid* was opening an internal inquiry into the conduct both of the security guards and the police officers. The Ombudsman requested further information.

AI believes that escorting officers should have clear instructions that no more force should be used during deportation than is reasonably necessary, in line with recommended standards on the use of force by law enforcement officers. Methods of restraint that impede breathing and involve a significant risk for life must be banned, and authorities must ensure that any administration of sedative drugs is in accordance with purely medical criteria in line with Principle 5 of the UN Principles of Medical Ethics. Any possible use of irritant sprays aimed at temporarily disabling an individual must be subject to strict guidelines and limitations on their use. Outright prohibition of adhesive tape use has also been recommended by the Commissioner for Human Rights of the Council of Europe (*Recommendation CommDH (01)1 of the Commissioner for Human Rights concerning the rights of aliens to enter a Council of Europe member State and the enforcement of expulsion orders*). The Recommendation also prohibits the use of any other means which may cause asphyxia or suffocation, such as gags, helmets and cushions; the use of incapacitating or irritant gas, or the use of restraints. In addition, it prohibits the use of tranquillisers or injections without prior medical examination or a doctor's prescription.

B.6.2. Allegations of ill-treatment of foreign nationals in Ceuta

Figure 7 Kingsley Ozazuwa lies on the ground outside the CETI in Ceuta, after an altercation with a security guard [*private*]

Figure 8 Kingsley Ozazuwa, with all his belongings, is taken by wheelchair from the CETI, from which he is definitively expelled [*private*]

A number of undocumented sub-Saharan migrants who do not have the money to pay for a direct crossing of the Straits of Gibraltar from Morocco to the Spanish peninsula arrive at the border with Ceuta in the hope of being able to cross into Spanish territory from there. A 2.70 metre-high, double razor wire fence separates Morocco from Ceuta (a similar one separates Morocco from Melilla), and is equipped with watch towers, infra-red security cameras and fibre-optic heat sensors. A road between them is designed for armed patrols. If the migrants are successful in climbing or otherwise entering by the border fence, often their next objective (other than staying clandestinely in the city) is to reach a National Police station where they can be registered before being caught and detained by Civil Guard patrols. A 1992 readmission agreement between Morocco and Spain obliges Morocco to readmit foreign nationals who enter Ceuta from Morocco.⁷⁹ However, there are reports that, if caught by Civil Guards, they are often simply deposited back on the Moroccan side of the frontier, without the chance to register with the Spanish authorities and thereby to apply for work and residence permits or for political asylum. On the Spanish side of the border fence a number of sheds or outhouses, which AI delegates have seen, reportedly house migrants detained by Civil Guards, without the benefit of lawyers or interpreters. The migrants are reportedly held at such places during the day before being conducted back across the border at night, where they may be found and ill-treated by Moroccan army patrols. They may then be taken to and abandoned at the Algerian border.⁸⁰

In May 2001, prior to being forcibly deported from Spain to Nigeria by air, a group of Nigerians told an AI delegation that they, and others, had been ill-treated by Civil Guards during previous unsuccessful attempts to reach Ceuta. AI was told that “more than three” migrants had recently been injured by rubber bullets, fired in apparent attempts to deter them from crossing

⁷⁹*Acuerdo entre el Reino de España y el Reino de Marruecos relativo a la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente*, Madrid, 13 February 1992.

⁸⁰Until it recently closed, the notorious camp of Reggane in Algeria became the subject of serious diplomatic incidents between Algeria and its southern neighbours, including Nigeria. Although the Reggane camp has now been closed, serious survival problems remain for sub-Saharan migrants sent back to Algeria. They are in large part denied the most basic services and are forced to leave one way or another, with a considerable risk of being sent to an unsafe environment.

the border. Civil Guards had also allegedly beaten and stripped some of the Nigerians, burned their clothes in front of them and hosed them with cold water in attempts to prevent them entering Ceuta again.

Kingsley Ozazuwa, one of those who claimed that he had been beaten, stripped, hosed with cold water and had his clothes burned during an earlier attempt to reach Spain, had been staying at the reception centre for immigrants, the *Centro de Estancia Temporal de Inmigrantes* (CETI) since December 2000.

At the CETIs in Ceuta and Melilla material conditions are relatively much improved, compared to conditions in the former camps, and immigrants benefit from a certain freedom of movement. However, they may, at the same time, find themselves trapped for many months while awaiting the outcome of applications for asylum or work and residence permits, and the length of such stays, and uncertainty of knowing how long they will be held, create psychological torment and breed tension.⁸¹ Security at the CETIs has been in the hands of private security guards contracted to the Spanish authorities from the security company PROCESA. Kingsley Ozazuwa told the AI delegates that on 21 April 2001, he had an altercation with one of the guards, during which the guard kicked him hard in the stomach. The guard apologised. However, when Kingsley Ozazuwa refused to accept the apology and insisted on the police being called, he was again beaten, this time by two guards. While other Nigerians present in the centre's dining room, where the incident occurred, protested by throwing their food on the floor, he was dragged outside and lay unconscious while police were called. An ambulance took him to hospital, after which he spent four days in the medical centre at the CETI. He was then taken to the National Police station of Las Rosales, where he reportedly tried, without success, to file a complaint for ill-treatment. He was held at the station for 24 hours being taken before a judge and charged with an offence of theft and inflicting injury ("*lesiones y hurto*"). Kingsley Ozazuwa, who did not speak Spanish, further told the delegates that, although an interpreter and court-appointed lawyer were present, he did not realise at the time that he had been charged with this offence and the charge sheet he had been given had not been translated. (He seemed genuinely surprised by the charge when this was translated for him by the AI delegation). He had not been given a copy of the medical report from the hospital, which would have helped to reinforce his own complaint. Kingsley Ozazawa was permanently expelled from the CETI and spent several days sleeping in the streets of Ceuta before being offered shelter by a Franciscan organization, the *Cruz Blanca* (White Cross). Five other Nigerians were temporarily expelled from the CETI as a result of the same incident.

⁸¹Only a comparatively small number of immigrants are able to lodge in the CETIs in Ceuta, those refused entry to, or expelled from, the CETI, must sleep in the streets or accept the hospitality of a Franciscan organization, the *Cruz Blanca* (White Cross). However, in January 2001 the church authorities were reported to be no longer able to provide the resources for the number of Africans arriving in Ceuta and about 100 were reported to be huddled in the streets around the Church of Our Lady of Africa.

The CETI director told the delegates, who visited the centre in May, that he did not know whether there were medical reports or judicial complaints in respect either of Kingsley Ozazawa or of an unnamed Nigerian woman who had reportedly been beaten on the legs by a security guard three months earlier and had required hospital treatment. The director was, however, aware that the security guards had medical reports testifying to their own injuries. The director denied the suggestion, made by newspaper reports, that a subsequent change in the guards was connected to incidents of ill-treatment at the centre.

B.6.3 Mass forcible expulsions

Article 13 of the ICCPR sets out the obligation to follow due process in cases of expulsion and deportation (including that expulsion should only occur in pursuance of a decision reached in accordance with law, and that individuals shall be allowed to submit objections to expulsions and to have the case reviewed by, and be represented before, a competent authority). The Human Rights Committee (HRC) has, in its General Comment 15 of 11 April 1986, stated that this provision applies in all cases where the legality of the entry or stay is in question. The HRC continues by stating that "Article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions". The HRC also takes up the issue of discriminatory treatment. ("Discrimination may not be made between different categories of aliens in the application of Article 13").

In May and June 2001 there were several waves of mass expulsions of Nigerians from Spain to Nigeria. Some of those expelled, who had earlier undertaken the perilous sea crossing from Morocco to Spain, had been transferred from the Spanish peninsula to Ceuta and had been waiting for eight or nine months at the CETI for the results of their applications for work and residence permits. At the time of the expulsions many were still awaiting the outcome of their applications.

On 3 May 2001 37 Nigerians were transferred from Ceuta to the Capuchinos detention centre in Málaga. The holding of the Nigerians at the detention centre aroused protests from NGOs, members of which had grouped outside. On the night of 15 May 2001, while a Ceuta court was still examining an appeal for annulment of the expulsion orders, police officers arrived to take the Nigerians to Málaga airport. Ten NGO members were reportedly injured after being kicked and beaten with truncheons during a police operation to clear the area in front of the centre. The 37 Nigerians were accompanied to Lagos, Nigeria on a special charter flight by 84 officers of the *Unidad de Intervención Policial* (UIP). The only Nigerian to remain behind was Ernest Odoje (who had swum from Morocco to Ceuta the previous October and become an altar boy at the church of Nuestra Señora de África in Ceuta). He reportedly suffered cardiac problems during the police operation and was allowed to remain in Spain.

This first mass expulsion was followed on 29 May by the expulsion of 24 Nigerians. According to reports, about 20 UIP officers from Madrid arrived in Ceuta on 29 May and detained the Nigerians at the CETI and at the Cruz Blanca centre in the early hours of the morning. The Nigerians were woken and assembled on patios while the names of those to be deported were read out. They were then held for five hours at Las Rosales police station, where a duty judge formally informed them that they were to be returned to Nigeria. They were

subsequently shipped to the peninsula and from there to centres in Valencia and Murcia. Some went on hunger and thirst strike to protest against their imminent expulsion.

Another mass expulsion began on 5 June. According to reports, police officers arrived at the Ceuta CETI in the early hours of the morning to detain nine Nigerians, whose identities had been checked by the Nigerian Embassy and who had received expulsion orders. After the police arrived at the CETI, the Nigerians reacted with fear and desperation, some fleeing from the centre, and one attempting repeatedly to cut his arm to avoid expulsion. A group of Nigerian women stripped off their clothes and clung to a fence, crying out, and imploring the police not to expel them. The nine men who were finally detained were taken to a detention centre in Sangonera (Murcia).

On 5 June a serious disturbance took place while a group of Nigerians were being transferred in a National Police bus to Alicante Airport from the Sangonera detention centre. The bus contained 10 individual compartments. The Nigerians panicked when they saw the bus. They reportedly lashed out, kicking, biting or offering passive resistance. They also attempted to destroy the doors of the van cells in which they were being individually held. While still on the motorway, several managed to climb onto the roof of the bus. When the van stopped two Nigerians ran away and others attempted to do so. Firemen and Civil Guards were called to help restore order. Segun Taiwo, one of the Nigerians who had earlier been on hunger strike, was taken to La Arrixaca hospital, reportedly as the result of a beating. He had a broken arm, a serious injury to the right eye and a head injury. A medical report reportedly referred to multiple injuries. His lawyer, who filed a complaint about police ill-treatment with a Murcia court, told AI that he had twice been refused access to Segun Taiwo while he was still at the detention centre and had been told - untruthfully - that his client was not there. Segun Taiwo was also charged with resisting authority. The lawyer claimed that several Nigerians had been beaten in the course of the operation to expel them and that several had sustained injuries, but that he had not been allowed to see various medical reports.

In July 2001 MSF submitted a report to the Spanish government and to the parliamentary parties alleging that, after arriving in Lagos, the Nigerians had been arrested at the airport and held in a detention centre (Alagbon Close) where others were being held for sexual crimes, drug trafficking and fraud. They were held en bloc as undocumented immigrants. They were held there for between two and seven days, until their families had paid a sum of money for their release.

One of those who had to pay a sum of 250 US dollars (about 50,000 pesetas) was Joseph Locky, expelled from Spain on 6 June. He had arrived in Ceuta on 18 December 2000 with a deep knife wound on his right forearm. A doctor who examined the injury recommended a series of tests to confirm the extent and seriousness of the injury. Red Cross medical reports apparently expressed the fear that the wound affected a nerve in the arm and that, if he did not undergo rehabilitation, the arm could become useless. A Ceuta judge rejected the appeal against detention prior to expulsion and subsequent appeals on medical and humanitarian grounds were also rejected, but the National Court ordered that his expulsion be suspended until there had been

time to examine the case. However, Joseph Locky was expelled 12 hours before the National Court's suspension order was received. While in Lagos the MSF delegation carried out another medical examination of Joseph Locky and reportedly found that the arm and hand muscles were damaged to the point where he could not hold objects or write. He had also lost feeling between the elbow and tip of the index finger. MSF reportedly confirmed that he would not be able to receive adequate treatment in Nigeria and urged that he be allowed back to Spain for further treatment.

In September 2001 the Commissioner for Human Rights of the Council of Europe made a series of recommendations on the rights of aliens wishing to enter a Council of Europe member State, and on the enforcement of expulsion orders. According to Recommendation (CommDH(01)1 of the Commissioner for Human Rights of the Council of Europe: "*When forced expulsion is unavoidable, it must be carried out with complete transparency in order to ensure that fundamental human rights have been respected at all stages*". (Recommendation 12). "*The best way to avoid using methods which might traumatise both those being expelled and those responsible for enforcing expulsion orders is to have the person concerned agree to return voluntarily*". (Recommendation 13). "*When expulsion orders are to be enforced, it is crucial at every stage of the procedure to inform the persons concerned of what lies ahead so that they can prepare themselves psychologically for their return. In accordance with Article 4 of Protocol No. 4 to the ECHR, collective expulsion is prohibited*". (Recommendation 14). "*Holding centre staff and immigration and expulsion officers must receive proper training so as to minimise the risk of violence*". (Recommendation 16).

While acknowledging that the above-mentioned Recommendations by the Commissioner for Human Rights of the Council of Europe were made after the time of these mass expulsions, it is clear that the expulsions did not accord with any of them. There was no "complete transparency", no voluntary agreement to return, no attempt at every stage of the procedure to inform the persons concerned of what lay ahead so that they could prepare themselves psychologically, and no apparent attempt to minimise the risk of violence. On each of the three occasions described above, the police officers sent to detain the expellees were sent in under cover of darkness and in a way, however unintentionally, as to cause distress and alarm. In these circumstances it cannot be surprising that there was resistance to police attempts to expel the Nigerians. Excessive force appears to have been applied, not only to the expellees themselves, but to those who demonstrated on their behalf. Moreover, the expulsions were of a discriminatory nature, directed at that time exclusively, and en masse, at persons of Nigerian nationality, and whose applications or appeals had not yet been decided. The failure to take individual needs or applications into account appears to be demonstrated by the case, in particular, of Joseph Locky; while lawyers acting on behalf of the persons involved appear to have been treated in a cavalier manner.

AI is concerned that these practices are in violation of Article 13 of the ICCPR, which sets out guarantees of due process in cases of expulsion and deportation.

C. FAILURE OF POLICE TO PROTECT AGAINST RACIST VIOLENCE: The case of El Ejido

Under the International Convention on the Elimination of all Forms of Racial Discrimination, state parties are obliged to ensure the right of everyone, without discriminating on the basis of race, to equality before the law. For example, states agree in Article 5(b) to guarantee, without discrimination on the basis of race, the right to protection by the state against violence, “whether inflicted by government officials or by any individual, group or institution”. AI is concerned that, in El Ejido, in February 2000, the conduct of officers was such that it may actually have helped to perpetrate race-related crimes against foreign immigrants and, at the least, did nothing to prevent them. AI is also concerned that no inquiry was carried out into the conduct of law enforcement officers during the El Ejido riots, despite many allegations of police passivity, and that government authorities are failing to address the underlying causes of racial tension in the area.

The Campo de Dalías (Almería) area of Andalucía, which includes the city of El Ejido, has for some years been a focal point for Moroccan immigrants - a majority of them undocumented - seeking to make a living from the intensive cultivation of fruits and vegetables, such as tomatoes, peppers and cucumbers, which are sold all over Western Europe. Out of a population of about 50,000, up to 10,000 in El Ejido are immigrants, mostly young single males, from Morocco. The majority of these live in “*cortijos*”. Often mere roofed shelters for the storage of agricultural products, and with room for one or more persons, the *cortijos* are dispersed beyond the urban centre and throughout the “plastic sea” of hothouses under which the vegetables are grown; frequently they are devoid of lighting, running water or other sanitary facilities.

Over the years some NGOs established offices in El Ejido. Their work on behalf of immigrants became a source of resentment to some parts of the resident population. NGOs such as *Almería Acoge* (AA) and the *Federación de las Mujeres Progresistas de Andalucía* (MP - an organization founded to assist women) helped immigrants in general to apply for work and residence permits, or to lodge complaints against police ill-treatment. (MP knew of several such reports prior to February 2000).⁸²

⁸²One such case is that of Meziane El Habib, a Moroccan worker who spent two days in police custody with a broken jaw. On 6 February 1999 the 22-year-old agricultural worker was waiting at a bus stop in El Ejido when a Local Police officer asked him for his papers. According to the judicial complaint, lodged with Court No. 1 at El Ejido, the officer proceeded, without apparent motive, to kick him in the stomach and he fell to the ground. While he lay there the officer reportedly rained blows on him and hit him with his truncheon. Meziane El Habib was taken to the health centre of El Ejido because he could not open his mouth and was suffering intense pain in his jaw and other parts of his body. He was subsequently returned to the police station and held there in custody until 8 February,

The events at El Ejido in February 2000 have often been described, and if they became the most well-known racist riots of their kind in Spain, it should be stressed that they were by no means an isolated occurrence. Local resentment against the immigrant population came to a head when, within the space of a couple of weeks, two Spanish men and a Spanish woman were killed by immigrants.⁸³ Between 5-7 February a huge wave of anti-immigrant violence engulfed El Ejido and the neighbouring areas, reaching as far as V́icar and Roquetas de Mar. Violent incidents continued to occur after that time. The violence included attacks on groups of immigrants and buildings belonging to local NGOs who helped immigrants, such as those belonging to the local branches of AA and MP. Some journalists were also attacked. Roads were blocked and much immigrant property, together with the livelihoods and possessions of many, were totally destroyed. Immigrants were pulled from their cars and the cars set alight. Immigrants were forced to seek refuge where they could, including the police station. Marauding groups of young men, masked and in balaclavas, and wielding baseball bats, rampaged through the streets and *cortijos*, burning, looting and inflicting injury. Some of the worst violence took place at an area of El Ejido called La Loma de la Mezquita, where many Moroccans were living in *cortijos* (see below).

The number of injuries recorded as a result of the events at El Ejido was 81 (33 Moroccans, two Malians, one Senegalese, one Russian, 19 police officers, seven Civil Guards and 18 Spanish residents). Immediately after the riots the total number of arrests was given as 64 (48 North Africans and 16 Spanish citizens) - a number that would appear to suggest that most damage had been done by the North African community, whereas the opposite was true.⁸⁴ Many of the arrests of Spanish citizens were related not to attacks on immigrants but to the attack on a Spanish government representative, who had apparently been mistaken for the member of a pro-immigrant NGO.

One of the main issues to arise from the riots at El Ejido was the role of the police at the height of the violence. There were many complaints from immigrants, and others, that the police had stood by while immigrants were being threatened and immigrant property was being destroyed, and that officers had only intervened to prevent physical confrontation between opposing groups. The President of the Junta of Andalucía recognized that there had been police "inhibition and passivity" from the first day of the riots, and attributed this to orders given by the

when he was released. Feeling unwell, he went to the Hospital del Poniente, where he underwent several days of medical tests, as a result of which he was transferred to Virgen de las Nives hospital in Granada. He was admitted on 12 February and was discharged six days later, on 18 February, after being treated for a fracture of the right side of his jaw. He required further treatment in March and April. The investigation is thought to be continuing.

⁸³On 22 January two farmers, José Luis Ruiz and Tomás Bonilla were murdered in the area of Águilas Bajas. On 5 February Encarnación López Valverde was fatally stabbed in the market at Santa María del Águila.

⁸⁴Some of the arrests of North Africans were reportedly related to violence by immigrant strike pickets against "scabs" in the immediate aftermath of the riots.

controversial mayor of El Ejido, who later blamed the riots on the provocative attitude of pro-immigrant NGOs.⁸⁵ The General Secretary of one of the police unions, the SUP, appeared to confirm this, when he reportedly stated that the police had received strict orders not to intervene. His statement was denied by the Spanish government. Others, while admitting police passivity, interpreted it as a positive response, generating calm and even saving lives.

However, the number of allegations that police had refused to intervene to prevent crime were too numerous and widespread to be ignored. Local NGOs who worked on behalf of immigrants, and whose own property was also destroyed, stated that the police did nothing to prevent the destruction of their offices, together with their equipment and files relating to immigrants, such as applications for work and residence permits. At least 200 complaints, which AI has seen, (together with many similar complaints from other areas), came from immigrants living at La Loma de la Mezquita, an area of El Ejido where many Moroccans lived in *cortijos*, and containing a little mosque, which was burned down during the riots, and has not been allowed to be rebuilt. Many of the complaints were extremely cryptic and restricted to a list of the property lost when the housing was burned and looted, but some also referred to the apparently disturbing conduct of the police during the attack on La Loma de la Mezquita.

According to reports, hundreds of immigrants in this area of El Ejido came under repeated attack between 5 - 8 February when Spanish nationals, armed with sticks, knives, stones, iron bars or baseball bats, and cans of petrol, entered the vicinity in vans or trucks, threatened, insulted, stoned and pursued Moroccans, burned their homes and destroyed or looted their possessions. Instead of intervening to prevent the extensive criminal damage that took place in the area, action by police officers appears to have consisted in getting immigrants away from their homes - sometimes by firing rubber bullets, using tear gas, or physically attacking the Moroccans - and in forming a barrier between the immigrants, on the outside, and the invading rioters on the inside, thereby actually favouring the arson attacks, in the view of some witnesses. Although the police action was reportedly designed to prevent physical injury, several immigrants claimed that they had sustained injuries either from the attackers or from police officers themselves.

One Moroccan, Said El Fatghy, claimed that on 5 February his home was attacked by a group of people carrying weapons. While fleeing, he was assaulted by two National Police officers, who hit him with truncheons all over his body. He returned to find his home had burned down. Rachid Kalouj claimed that, on 6 February, he was returning to La Loma from a demonstration of Moroccans against the violence in another part of the town when a group of armed people threw stones at him and hit him with sticks. He said that an officer also fired rubber bullets at him (presumably to keep him away). His home was burned to the ground. Larbi El Sadik claimed that, on 7 February, he was attacked at La Loma by a group of armed thugs, who threw stones at him. As he fled from them he was also fired on by National Police officers

⁸⁵Manuel Chaves, President of the Junta of Andalucía, in an interview in *El País*, 13 February 2000.

using rubber bullets. He later found his home and belongings destroyed. Youssef Kadi claimed when he tried to stay to protect his home and possessions, he was beaten by National Police officers and was also beaten at the police station, where he sought shelter for three days. He stated that he also bore the marks of being hit by a rubber bullet. Many other immigrants, including long-established residents and some Spanish people related to immigrants, complained that the police did nothing to protect them or to prevent their homes and property from destruction and that they simply watched while these were set on fire. For example, Yolanda Martínez Arno, a Spanish worker married to a Moroccan, stated that, on the night of the outbreak of the riots, she saw a truck with about 50 young people armed with sticks threatening and insulting immigrants in the street. She went to find her relatives in a nearby bar, where there were Moroccan customers. At the approach of the rioters, the Moroccans were afraid to leave. At about 9 pm a nearby Local Police patrol was asked to help them leave. The police officers told her they could do nothing, but would send a vehicle to evacuate them. According to Yolanda Martínez, by 1pm no police help had arrived. The crowd outside began to throw stones, broke the windows with sticks, and entered the bar. Yolanda Martínez was forced out of the bar by one of her family, and saw a police car nearby, with officers watching. The officers were eventually persuaded to accompany her back to the bar and help the besieged customers out. Yolanda Martínez alleged that it was only with much reluctance that the officers took the Moroccans to the police station for their protection overnight. She added that subsequent reinforcements of police officers from Madrid and Seville seemed to show a greater “understanding” of the situation.⁸⁶

A European Parliament resolution on the outbreak of racism and xenophobia in El Ejido (17 February 2000) expressed its “strongest possible condemnation of the crimes perpetrated” in February 2000 and called for the “full weight of the law to be brought down upon the authors thereof”. However, despite international condemnation, and despite the numerous complaints about police passivity during the riots of El Ejido, AI understands that no inquiry was undertaken into police conduct, and only two complaints have progressed in the courts. Between 9 February and 12 March 2001 lawyers from *SOS Racismo*, the *Asociación Libres de Abogados de Madrid* and the *Asociación Libre de Abogados de Granada* came to El Ejido to gather complaints from immigrants. Out of a total of 693, 22 were considered not valid because they contained insufficient information about the identity of the complainants. Out of the remaining 671, some related to police assault (12) or failure to act (16), with information on time and place and some form of identification of the officers concerned. Another 374 related to attacks by other persons. The majority related to the destruction of property. As stated above, only two of the total number of complaints have led to the bringing of charges.

A year after the riots at El Ejido, the general social climate there is widely reported to be unchanged, or even worse, with a greater polarisation of society between those “in favour” and those “against” immigrants. In the aftermath of the riots 42 four-bunk modules were

⁸⁶“*El Ejido, Terre de non droit, Forum Civique Européen, Comité Européen de Défense des Réfugiés et Immigrés, 2000.*”

installed to house immigrant workers. However, the mayor of El Ejido, reportedly favouring a policy of virtual racial segregation, and supported by many residents, is opposed to providing housing for immigrant workers in the urban centre, and insufficient appears to have been done to improve often execrable working and living conditions. Since February 2000 there have been a number of reports about immigrant shacks being demolished (including in the area of La Loma de la Mezquita), apparently for reasons of hygiene and security. A European Parliament delegation described the living conditions of the immigrants as “appalling”. However, the demolition of the shacks has often been opposed by the immigrants themselves, in the absence of appropriate alternative accommodation, and those living in the shacks, or in the ruined *cortijos*, have simply, and repeatedly, been forced onto the street.

A year after the riots NGOs were still having great difficulty in re-establishing their presence in El Ejido. The El Ejido branch of MP, which was a main target of the race riots, remained effectively out of operation. Its doors were repeatedly sealed with silicon and its locks had to be changed eight times by May 2001. It has often received threatening telephone calls and is allegedly harassed by local public officials. The office of AA had still not reopened.

In 2000 the CERD expressed concern about violence against Moroccans in El Ejido, and recommended that Spain take measures to resolve the underlying [socio-economic] causes of tension and unrest, “not merely on an emergency basis, but as part of a long-term strategy to combat racial discrimination and violence ...” So far there is little sign of this happening.

D. IMPUNITY

AI believes that impunity, or effective impunity, is an issue which affects ethnic minorities or foreign nationals in a specific way. Their vulnerable status - particularly when they may be undocumented - makes them fearful of resorting to the law. They are also more likely to consider the cost of judicial proceedings to be beyond their means, or to be inhibited by poor knowledge of Spanish. AI has also noted that, in those cases where complaints have been lodged by members of ethnic minorities or foreign nationals - the majority of those described in this report - judicial proceedings are unduly protracted and convictions, if reached, or not overturned on appeal, are frequently (though not always) nominal and rarely result in custodial sentences. While acknowledging that racist motivation is often difficult to prove, the “aggravating circumstance” of racist motivation, introduced into Spanish law in 1996, has rarely been considered by the courts.

In recent years AI has frequently expressed its concern about a number of factors which point to the existence of effective impunity as regards judicial processes in general connected with human rights violations by law enforcement officers. The organization has argued that: “the pattern of nominal sentences for law enforcement officers convicted of torture or ill-treatment, the availability of pardons, lax enforcing of sentences, discrepancies in standards of forensic medical reporting and the perpetuation of incommunicado detention are all contributory factors in the failure to eradicate torture and ill-treatment”.⁸⁷

Concern about impunity has also been expressed by a number of UN treaty bodies. In 1996 the Human Rights Committee (HRC), commenting on torture and ill-treatment, stated that: “...investigations are not always systematically carried out by the public authorities and ... when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released”. The Committee recommended that Spain “establish transparent and equitable procedures for conducting independent investigations into complaints of ill-treatment and torture involving the security forces and urged it “to bring to court and prosecute officials who are found to have committed such deeds and to punish them appropriately”.⁸⁸ In 1997 the CAT stated that the long delays in legal proceedings relating to torture, both at the investigation and trial stages, were “absolutely incompatible” with the promptness required by the Convention. The CAT added: “The sentences imposed on public officials accused of acts of torture, which frequently involve token penalties not even entailing a period of imprisonment, seem to indicate a degree of indulgence which deprives the criminal

⁸⁷ “Spain: Comments by Amnesty International on the government’s Fourth Periodic Report to the Human Rights Committee” (AI Index: EUR 41/07/96) and “Spain: A briefing on human rights concerns in relation to the Basque peace process” (AI Index: EUR 41/01/99).

⁸⁸ CCPR/C/79/Add.61.

penalty of the deterrent and exemplary effect that it should have and is also an obstacle to the genuine elimination of the practice of torture”.⁸⁹

Referring specifically to racism, the CERD, in 1996, noted an increase in the number of racist incidents involving the police and Civil Guard, but that the number of convictions arising from such incidents “does not seem to increase proportionately”.⁹⁰

As stated earlier, AI believes that ill-treatment by police officers is both frequent and widespread, but only a small proportion of cases result in judicial complaints, and of these only a handful come to court. The problem is exacerbated in the case of undocumented foreign nationals, since these are often afraid to bring complaints in the first place, and anyone who does file a complaint may, in the words of *Ararteko*, be in for a “disagreeable surprise”. The two control mechanisms available in Spanish law to parry police abuse of authority - the judicial inquiry and the internal inquiry - should be set in motion by simple knowledge that such abuse has been alleged. However, in real life this does not occur, and in practice an inquiry is not opened until a formal complaint is lodged and the facts are known. Control mechanisms then depend on the possibility that the investigations will be prompt and impartial and any sanctions effective. But, as *Ararteko* remarked in its report (see under B.3): “The uselessness, in practice, of the control mechanisms set out by law allows any police excess or action contrary to law to remain effectively unpunished, with the pernicious effects that derive from that (lack of compensation to the victim, reinforcement of irregular conduct ...”etc).⁹¹ Some of the factors resulting in impunity which directly affect foreign nationals, in particular, can be listed as follows:

- Fear of bringing complaints about police officers or Civil Guards, particularly on the part of those who are awaiting work or residence permits, because of anxiety that they may be expelled from the country if they take any action;
- Fear of bringing complaints because of the common practice, whereby law enforcement officers lodge counter-complaints, or threaten other reprisals;
- Failure to inform suspects of the reason for their arrest and detention;
- Failure of law enforcement officers to identify themselves to suspects;
- Lack of interpreters or translators;
- High mobility/lack of address, particularly of undocumented foreign nationals;

⁸⁹A/53/44, paras 119-136 (Concluding Observations/Comments).

⁹⁰CERD/C/304/Add.8.

⁹¹“*La inutilidad real de los mecanismos de control previstos por la ley permite que cualquier exceso policial o actuación contraria a la propia legalidad, de hecho, pueda quedar impune, con los efectos perniciosos que de ello se derivan (ausencia de reparación a la víctima, refuerzo de las conductas irregulares ...)*”

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- Problems in availability of lawyers to help bring cases, and the sheer expense of lawyers, or inadequacy of legal aid;
 - Failure of law enforcement officers to register complaints.

Such problems can be illustrated by individual cases described in this report (as well as by others known to AI but not described because complaints have been withdrawn from fear of reprisals). Miriam Verástegui, an undocumented foreign national (B.2.), was apprehensive about bringing a complaint of sexual assault against a police officer and only did so when encouraged by another (woman) police officer. Kingsley Ozazuwa (B.6.2.) told AI delegates that he had wished to bring a complaint against a security guard at the Ceuta CETI but that police officers had not listened to him, and that he had not been told, or had not understood, the nature of the charge against him. Many children facing expulsion from Melilla have testified to the failure of police officers to listen to their case prior to expulsion, and to the absence of lawyers to help them (B.5.2).

However, once a complaint is made, the “disagreeable surprises” mentioned above, may include the following:

1. Police habit of closing ranks and shielding the identity of officers. One clear example is that of Rita Margarete Rogerio (described in B.2).
2. Campaigns of disinformation against complainants. One example of this is the case of Mamadou Kane (B.4). Once Mamadou Kane submitted his complaint against the four Local Police officers in Vigo, he was threatened with a counter-complaint by Vigo city council. In defence of the officers, the mayor stated that the figure of four or five recent reported cases of Local Police ill-treatment, which had been described in the local press, was not an excessive figure, and those who criticized their conduct were creating an atmosphere of hostility. The council refused to contemplate disciplinary measures against the officers, even though one of them had a criminal record, had been several times suspended and had once been imprisoned. Again, in the case of António Fonseca, there were police attempts to discredit the family, who were accused of “manipulation” of the body, and later, of manipulating photographs of the body. The three officers who complained about detention and expulsion of children from Ceuta were also subjected to a sustained campaign of vilification, as well as to a counter-complaint brought with the support of the city of Ceuta (see below).
3. Untraceability of witnesses. Inquiries into possible human rights violations have been hindered by the apparent inability or failure to trace eye-witnesses. Although, for example, there was no serious allegation that Julienne Danielle (B.1.) had not committed suicide, the apparent failure to trace or question those who had been detained in the same Civil Guard barracks at the time meant inevitably that speculation remained over the real cause of her death. Again, in the case of António Fonseca (B.1.1.), it appears doubtful that all witnesses were traced or questioned.

4. Delays in, or length of, proceedings. This remains a serious problem in Spain. In many cases described in this report, judicial proceedings have been lengthy or are not yet concluded. To give just some examples: Rita Margarete Rogerio (B.2.) was raped in police custody in 1995. Some officers were not tried until 2000. Miriam Rosa Verástegui (B.2.) was allegedly sexually assaulted in 1998. The police officer was not formally charged until 2001 and the case has still not come to court. Driss Zraidi (B.3.) was allegedly seriously assaulted by police officers in 1998. The case has still not come to court, although at least one officer had reportedly admitted to the assault. A family of Roma (B.3.1.) were tortured in a police station in Madrid - 10 years before the officers were convicted. In 1998 three police officers lodged a complaint about “serious irregularities” in the detention of undocumented Moroccan children (B.5.1). The complaint was closed by one investigating judge, re-opened by another, but over three years later little, if any, progress was being made. (See also below). In July 2001 AI wrote to the Spanish government to ask, among other things, for information about the case of 13-year-old Mohamed Garbagui, (B.5.1.), who lodged a complaint about ill-treatment in June 2000, and about which nothing further was known. No answer has yet been received.

5. Wariness or timidity on the part of many prosecutors, investigating judges and courts with regard to bringing cases against or convicting public officials, even in such serious cases as, for example, that of António Fonseca, where forensic evidence was disputed and police officers had engaged in a whole series of contradictory statements. *Ararteko* (B.3.) found that there was a general tendency to give greater credibility to the police version of events, and that police violations against foreigners in Bilbao were seldom corrected by any subsequent judicial proceedings. It should also not be forgotten that, out of 671 complaints mentioned by *SOS-Racismo* as being filed by lawyers at El Ejido (and many more complaints were registered), only two have prospered. Sometimes, where they do go forward, one court will overturn the verdict of another. For instance, in the case of María de los Milagros Robles (see below) a court overturned the finding by the investigating judges that ill-treatment or excessive force had indeed been used by police officers. The case of María de los Milagros Robles (described below) also illustrated the failure to take into account the possible racial dimension.

D.1. The case of the three police officers in Ceuta

An example of the impunity about which AI is concerned, is that of the three Local Police sergeants mentioned in B.5.1. As described in that section, the officers were concerned that there were serious irregularities in the detention and expulsion of Moroccan children from Ceuta.

On 5 October 1998 Manuel Navia Fernández, Juan António Espinosa Ramírez and Juan Luis Ramos Muñoz, after unsuccessfully trying to alert their colleagues and superiors to these irregularities, lodged a judicial complaint with the Ceuta prosecutor against the head of the Local Police of Ceuta, a Ceuta government official responsible for the police, and three other police officers, for ordering and permitting serious violations of the law dealing with foreign minors. As a result of their action the three sergeants were withdrawn from patrol duty and sent to guard the local cemetery. They were then suspended from duty, without pay, pending disciplinary proceedings against them. After seven months they were reinstated, because there was no evidence that they had committed a disciplinary offence. However, on 15 January 1999 a judicial complaint was filed against them for making false accusations by a number of those who had been the target of the officers' complaint, and who had also been targeted in a separate complaint, lodged by several NGOs and by a parliamentary party on 12 January 1999.⁹²

The three officers' action was effective, in the sense that the expulsions of children in Ceuta stopped, following an order made by the Attorney General in April 1999. Most allegations of police ill-treatment of children also stopped. However, by the end of 2001, over three years later, all the judicial complaints were still under investigation - or rather, they appeared to have been paralyzed. After requesting transfer from the case, the first judge investigating the three officers' complaint (attached to *Juzgado de Instrucción No. 3*) was permitted to order its closure. The judge who replaced him re-opened it after receiving the second complaint of 12 January 1999. However, it appears that, three years later, some of those accused had still not been interviewed, and the Ceuta prosecutor appeared to have taken no action to advance the case. During this time, the three officers (as well as their families) had suffered continual harassment and vilification, including by a hostile local press. Meanwhile, it was reported that, on 25 May 1999, some Local Police officers in Ceuta, involved in successive and repeated expulsions of Moroccan minors, and who were the subject of judicial proceedings, had been awarded medals for Professional Merit.⁹³

D.2. The case of María de los Milagros Robles García

On 11 February 2000 María de los Milagros Robles García, a civil servant, and her husband, Luis Márquez Zurita, a teacher, born in Tetuán, Morocco, had been shopping and were talking to a Sahrawi friend and his companion in the bus station at Badajoz (Extremadura). They were approached by three National Police officers from the *Brigada de Extranjería*, (aliens unit), who asked all four for their identity papers. Tension grew when an officer reportedly began to

⁹²*Asociación pro Derechos Humanos (España), Asociación pro Derechos Humanos (Andalucía), Asociación contra la Tortura, Comité de Defensa de los Refugiados, Asilados e Inmigrantes en el Estado Español, SOS Racismo and Izquierda Unida (United Left).*

⁹³*“Personalmente, siento estupor, vergüenza e indignación, por la entrega de medallas efectuada a algunos de los Policías Locales de Ceuta implicados en las sucesivas y reiteradas expulsiones de menores magrebíes ...”* José Luis Calvo Casal, president of Prodeni-España, in a letter to the Spanish government, dated 1 June 1999

walk out of the station with the papers belonging to Luis Márquez, without explaining what he was doing. When Luis Márquez asked what he was doing, he was reportedly pushed roughly aside. His wife told the officers to leave him alone. Three of them replied by shaking her “very violently” and pushing her against a wall. The couple were taken to the regional police headquarters (*Jefatura Regional de Policía*), where María de los Milagros Robles was detained for several hours. She was subsequently treated for light injuries at a clinic and required medical treatment for depression.

According to the police, María de los Milagros Robles, prior to arrest, had struck one of the officers three times on the back with a newly-purchased mop “in front of everyone present at the bus station, well over 40 people” and had offended their honour by calling them “Murderers!” (“*Asesinos!*”) The officers explained in a document that they were carrying out checks on foreigners at the time and had approached the couple, and the Sahrawis, because “from their features you could see that they were foreign”.⁹⁴ Both parties to the case lodged complaints in court.

On 25 May 2000 the investigating judge concluded that, although the couple had been obstructive and disrespectful to the police officers, and María de los Milagros Robles had struck an officer with her mop, “without causing injury”, the police officers had used excessive and disproportionate force in their dealings with the couple - especially given that many police officers had been present at the time, and therefore such force had not been necessary. All were sentenced to fines and appealed the decision, while the Spanish Ombudsman, who also investigated the case, recommended to the DGP that a disciplinary inquiry into the police conduct be opened. However, on 22 September 2000 the Court of Badajoz (*Audiencia Provincial de Badajoz*) ruled that the officers had acted according to their duty and in “legitimate defence” and they were acquitted. The court added that one of the officers had been ill-treated, because struck with a mop, but that to shake someone and push them against a wall could not be described, properly speaking, as an act of ill-treatment.

The case is of concern to AI not only because of the disproportionate behaviour of the police officers (as indicated by the investigating judge) but because it gives an example of the effective impunity that police officers enjoy. The court did not examine the racial element in the case: the fact that the incident arose from an identity check carried out on a group of persons purely, and exclusively, because some of them had “foreign features”. It also clearly illustrates one of the concerns expressed by *Ararteko*, the Basque Ombudsman, as described earlier in the report, according to which police officers often do not explain what they are doing - why certain individuals have been approached, why their papers are being taken away, etc. - and, in this way, may help to add to the tension engendered by the identity check.

⁹⁴“...se han dirigido hacia una pareja, que por sus facciones se podría determinar que eran extranjeros...” (Statement to *Jefatura Superior de Policía*, 11 February 2000). The case is reminiscent of that of Rosalind Williams, described earlier in this report.

CONCLUSIONS

AI's examination of race-related torture and ill-treatment in Spain concludes that there are a number of serious concerns relating to the conduct of state agents (in this case, local, autonomous and national police forces and Civil Guards). AI has found that the number of allegations of torture or ill-treatment has been rising, and that they are frequent and widespread. AI is concerned that, despite the existence of laws and codes which attempt to guard against discriminatory or arbitrary conduct by state agents, and to which lip service is often paid, "racial profiling" is common and the discriminatory use of identity checks - sanctioned by a recent Constitutional Court ruling - has led to a situation in which many persons of foreign origin in Spain have been abused, and physically ill-treated by public officials. There are numerous allegations that those who are intercepted or arrested have not been given explanations for their interception or arrest, and that challenges have been interpreted as resistance to police authority and often penalized. A number of cases of arbitrary detention have also been recorded, in which the persons have been detained, ill-treated, and reportedly verbally abused, solely on the basis of their ethnic identity.

Undocumented women immigrants have been particularly vulnerable to torture in the form of rape or sexual assault while in custody. Several cases have illustrated the need for a proper code of procedure for the registration, supervision or transfer of detainees being held in custody, and for doctors and lawyers to be allowed to examine their patients, or interview their clients, in privacy, without obstruction from police officers. Officers in chain-of-command control must be held responsible for attempts to cover up abuses.

Immigrants subject to expulsion procedures have not been treated with dignity or transparency. AI is concerned about incidents of ill-treatment and inappropriate use of restraints, as well as about the apparent discriminatory nature of some mass expulsions. AI is seriously concerned about the series of expulsions of unaccompanied children from Spanish territory, their lack of legal protection and care, and the physical ill-treatment that they may suffer in the process of such expulsion, either while being detained and in transit, or at the Moroccan border and in the hands of the Moroccan police. There have also been clear and disturbing reports, eloquently illustrated by the case of El Ejido, that police officers have failed in their duty to protect foreign nationals from serious racist attacks.

Impunity casts a dark shadow across this landscape of human rights abuse: victims, or alleged victims of ill-treatment who are immediately served with counter-complaints, victims unable to even contemplate the bringing of complaints, through fear, lack of adequate legal aid or the apathy and bias of the judicial authorities. Police officers with criminal records, or against whom disciplinary proceedings are still pending, have not only been allowed to continue to work as public officials in situations which demand respect for human rights and sensitivity to racial discrimination, but have been roundly supported by the political authorities. Inquiries into deaths in custody have been fraught with unresolved contradictions, and have manifestly failed to appear either thorough or impartial. Proceedings are frequently subjected to delay; prosecutors and investigating judges have frequently appeared indulgent to police officers accused of human rights violations and such officers have even been promoted or awarded medals while still the

subject of judicial proceedings. Police officers who have defended national and international human rights standards have, on the other hand, been vilified and punished.

At the same time individual state agents, police officers or Civil Guards, have on occasions, shown outstanding courage and generosity in their conduct towards vulnerable immigrants and foreigners. It is time that the Spanish authorities, governments, courts and police departments, gave them their full support. The Spanish authorities must decide whether their identity in the 21st century is to be founded on racist attitudes and abusive practices, or tolerance of diversity and respect for human rights.

RECOMMENDATIONS

Amnesty International calls on the Spanish authorities to adopt a national strategy and plan of action to combat all forms of racism. This should include specific measures to prevent torture and ill-treatment and related manifestations of racism in the administration of justice.

Representatives of affected groups, relevant NGOs and experts working on the issue of racism and the administration of justice, as well as relevant officials, should be involved in the process of designing such a strategy and plan, which should contain measurable goals and monitoring mechanisms.

1. Preventing impunity

(1) All allegations of torture, ill-treatment and other race-related abuses by agents of the state should be subject to prompt, thorough, effective and impartial investigations. Complainants should receive protection against any form of intimidation.

(2) Officials under investigation should be removed from their positions of responsibility pending the outcome of disciplinary and/or judicial proceedings against them. Investigation procedures should be prompt and transparent. Complainants should have full access to the information they need to prosecute a case and be kept informed of the progress of the investigations. Information about complaints procedures should be prominently displayed in all police stations or Civil Guard barracks, and be made available also in French, English, Arabic or Berber.

(3) The outcome of all criminal, disciplinary and administrative investigations into alleged violations should be made public promptly after the completion of the investigation. Any official found responsible should be brought to justice and sentences should be imposed which are commensurate with the gravity of the crime. Victims should receive full and adequate reparation.

(4) Governmental monitoring agencies, such as Ombudsman's offices, should maintain and publish regular and comprehensive data on race-related complaints against public officials and how they have been dealt with, in order to identify patterns of violations and recommend appropriate remedial action. Police and Civil Guard departments should provide information on the internal disciplinary process by publishing regular statistical data on the type and outcome of complaints and disciplinary action. (They should also publish regular statistics on the number of people shot and killed or injured by police officers and Civil Guards and other deaths in custody). There must be clear guidelines requiring officers to report abuses, and officers with chain-of-command control should be held responsible for enforcing those guidelines and strictly enforcing penalties for failing to report, or covering up abuses.

(5) Bearing in mind that, under Spanish law, racism is now an aggravating factor in a crime, and in order to facilitate the detection of cases of racial discrimination in incidents of alleged torture or ill-treatment, police officers and courts should ensure that every attempt is made to investigate, wherever relevant, the possibility of a racial motive for ill-treatment or torture, as well as the allegation of ill-treatment or torture in itself. This would involve analysing how race and ethnicity may be a factor influencing the reasons and circumstances of a person's arrest and detention, the form and consequences of the treatment received and their access to mechanisms of complaint and redress in the event of a violation of their rights.

(6) In order to assess the effectiveness of Penal Code revisions aimed at combating racism and racist ill-treatment, including the strengthened provisions on torture and on racist motivation as an aggravating factor, the authorities should monitor and evaluate how they have been implemented in practice since their introduction in 1996. To this end, law enforcement and judicial authorities should compile statistical data on complaints of crimes committed with a racist motivation and on the investigation and punishment of such crimes.

(7) In view of the large number of cases in which investigations appear to have been inadequate, AI urges the Spanish authorities to consider establishing a commission of inquiry into cases and patterns of race-related ill-treatment. The commission of inquiry should be composed of persons renowned for their independence, impartiality and relevant expertise. It should have the necessary powers and resources to conduct on-site investigative visits, to obtain all relevant evidence and documentation, and to compel the collaboration of all relevant authorities. Its mandate should include:

- investigating patterns of race-related torture and ill-treatment, including those described in this report, as well as individual cases;
- making recommendations for the criminal prosecution of those responsible and for compensation and redress to be provided to the victims;
- reviewing all laws and law enforcement practices that appear to have a disparate impact on members of racial or ethnic minorities;
- making recommendations regarding institutional changes needed to prevent further abuses, including changes in law, administrative practices, recruitment, training and accountability of all relevant personnel.

(8) Judicial officials (including prosecutors, investigating judges) should recognize that rape and serious sexual assault committed by or with the consent or acquiescence of a public official is

always a form of torture. The Penal Code provisions on torture should not be interpreted in a more restrictive manner than those of Article 1 of the Convention against Torture.

2. Safeguards against ill-treatment during detention

(1) All detainees should be immediately informed of their rights, including the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Detention procedures and practices should conform to international standards for the treatment of persons deprived of their liberty, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

(2) In line with such principles, detention policy and practice should be applied without distinction on such grounds as race, colour or ethnic origin. The decision of the Constitutional Court in the case of Rosalind Williams, to the effect that skin colour or other foreign aspect is a lawful and legitimate criterion for use by police officers in checking identities, should be the subject of urgent review.

(3) Detainees should have access to relatives, lawyers and doctors without delay. Foreign or non-Spanish speaking detainees must be provided with an interpreter, free of charge. A proper code of procedure should be established for the supervision of detainees in detention centres, in police stations in general - and in the *Registro Central de Detenidos de Madrid* in particular. Strict rules should be drawn up to govern the registration, transfer and custody of detainees by public officials, in order to ensure that detainees are protected from the criminal intent of one or several officers. An active policy should be pursued of employing women police officers or Civil Guards to supervise women detainees. Doctors and lawyers must be allowed to examine their patients or interview their clients in privacy.

3. Safeguards against ill-treatment in the context of immigration controls

(1) The Spanish authorities should ensure that the 1951 Refugee Convention is implemented in a non-discriminatory manner. The principle of *non-refoulement* must be scrupulously observed. Asylum seekers should be informed of their rights, including the right to legal assistance and competent interpretation at all stages of the asylum process.

(2) The Spanish authorities - including the autonomous governments in Ceuta, Melilla and elsewhere in Spain - must abide by international standards on the care and protection of unaccompanied children. Before any decision is taken to remove a child from Spain the child's case must be examined thoroughly and on an individual basis. They must be given the services of a lawyer and interpreter, and must be given the time they need to put their case and read any documents given to them to sign. Unaccompanied children must be able to enjoy all the rights guaranteed under the UN Convention on the Rights of the Child.

(3) With regard to use of restraints during forcible deportations, AI urges the Spanish government to review police restraint techniques and degrading treatment by police officers acting as escorts during deportation operations. AI recommends that escorting officers have clear instructions that no more force should be used deporting a person than is reasonably necessary, in line with recommended standards on the use of force by law enforcement officers. Methods of restraint that impede breathing and involve a significant risk to life must be banned. AI urges the Spanish authorities to adhere to the outright prohibition of adhesive tape as recommended by the Commissioner for Human Rights (B.6.3). AI also urges the authorities to ensure that any administration of sedative drugs is in accordance with purely medical criteria in line with Principle 5 of the UN Principles of Medical Ethics, and any possible use of irritant sprays aimed at temporarily disabling an individual be subject to strict guidelines and limitations on their use. During deportation operations all deportees are provided regularly with food and drink and have ready access to toilets and are treated with respect for their human dignity.

(4) The Spanish government should accede to Protocol 4 to the ECHR, according to which collective expulsion of foreign nationals is prohibited. The Spanish government should also accede to Protocol 7 to the ECHR, which sets out guarantees of due process in expulsion cases.

(5) The Spanish government should fully implement its obligations under Article 13 of the ICCPR, which sets out guarantees of due process in expulsion and deportation cases and [implicitly] includes a prohibition on collective expulsion.

(6) Individuals and organizations working to defend the rights of non-nationals and ethnic minorities should be allowed to carry out their legitimate human rights activities without fear of prosecution, harassment or intimidation by the authorities.

4. Training

(1) Human rights and race-awareness training should be a fundamental part of the training of all law enforcement, judicial and immigration officials from the point of recruitment onwards.

(2) Central, autonomous and local governments must ensure that police officers are trained in the effective prevention and response to racial violence and discrimination by private individuals, groups or institutions.

5. Ratification and implementation of international standards

(1) Spain should ratify without reservations and implement in full international human rights treaties prohibiting racial discrimination and the commitments affirmed at the World Conference

against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001.

(2) The Spanish authorities should ensure the full implementation of the recommendations made by UN treaty bodies regarding the prompt and thorough investigation of allegations of ill-treatment; effective compliance with safeguards against ill-treatment; measures to address the particular risks of violence against foreign women; and the need to tackle underlying economic and social causes of racism and racist ill-treatment.

(3) The Spanish government should ratify Protocol 12 to the ECHR as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

GLOSSARY

Some terms or acronyms are explained below:

Ararteko	Basque Ombudsman
Ayuntamiento	City council
Ertzaintza	Basque autonomous police
Mossos d'Esquadra	Catalan autonomous police
AA	Almería Acoge
AAD	Agentes de Atención Directa
ACT	Asociación contra la Tortura
APDH	Asociación Pro Derechos Humanos
ATIME	Asociación de Trabajadores e Inmigrantes Marroquies en España
CAT	Committee against Torture
CERD	Committee on the Elimination of Racial Discrimination
CETI	Centro de Estancia Temporal de Inmigrantes
CIE	Centro de Internamiento de Extranjeros
CPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DGP	Dirección General de la Policía
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECRI	European Commission against Racism and Intolerance
EU	European Union
EUMC	European Monitoring centre on Racism and Xenophobia
HRC	Human Rights Committee
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
MP	Federaciones de Mujeres Progresistas
MSF	Médicos sin Fronteras
PP	Partido Popular
PRODEIN	Asociación Pro Derechos de la Infancia
PRODENI	Asociación para los Derechos del Niño y de la Niña
SUP	Sindicato Unificado de Policía
UDHR	Universal Declaration of Human Rights