COMMENTS BY THE MINISTRY OF THE INTERIOR ON THE REPORT BY THE COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE, AFTER HIS VISIT TO SPAIN FROM 3-7 JUNE 2013

Having analysed the Report prepared by the Commissioner for Human Rights of the Council of Europe, Mr Nils Muižnieks, after his visit to Spain from 3-7 June 2013, the Ministry of the Interior has the following comments.

1. Human rights violations in the context of incommunicado detention. (Paragraphs 100-107)

The procedural concept of *incommunicado detention* was incorporated into the Criminal Procedure Act by Organic Law 4/1988 of 25 May, proceeding from the Counter-Terrorist Act.

Incommunicado detention is an essential legal instrument in combating terrorism and organised crime, in globalised, borderless society in which criminal groups have a great deal of sophisticated resources enabling them to not only elude the action of justice, but also to commit more criminal acts.

The affirmation in the report that fundamental rights are violated during the application of this instrument does not correspond to the facts. During the essential, minimum time that incommunicado detention lasts, procedural safeguards are scrupulously respected, and further guaranteed by the presence of an *ex officio* appointed lawyer throughout the entire process.

1.1. Alleged mistreatment by the Guardia Civil in the context of incommunicado detention. Lack of adequate judicial oversight of individuals subject to incommunicado detention Ex officio appointed lawyers in incommunicado detention. Incommunicado detention of minors. Investigations of mistreatment.

The State Security Forces scrupulously meet all the stipulations in the Spanish Constitution (Art. 17.2) and the Criminal Procedure Act (Art. 520 et seq.), regarding the form in which detentions are carried out.

Spain has ratified and incorporated into its legal system different international instruments, highlighting those that stem from the United Nations (such as the Universal Declaration of Human Rights of 1948 or the International Covenant on Economic, Social and Cultural Rights of 1966), as well as those proceeding from the Council of Europe (Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987).

Moreover, Spanish legislation has other laws and rules regulating the treatment of detainees, such as Act 2/1996, of 13 March, developing the basic constitutional principles applicable to the action of the State Security Forces, or Instruction 12/2007 of 14 September, from the Secretariat of State for Security, regarding the conduct required of members of the State Security Forces to guarantee the rights of detainees or those held in police custody.

Incommunicado detention in relation to ETA terrorism is a measure responding to the needs set forth in Art. 509 of the Criminal Procedure Act: "present persons presumed to be involved in the events under investigation from avoiding the action of justice, or from hiding, altering or destroying evidence related to their commission."

Incommunicado detention in Spain is an exceptional procedural cautionary measure, adopted for reasons whose adoption, scope and control are exclusively judicial, subject to jurisdictional review, which provides material and formal safeguards no included in other legal systems within the European Union. Contrary to the statement in the Report by the Commissioner for Human

Rights of the Council of Europe, incommunicado police detention is carried out under the control of the competent judicial authority.

Incommunicado detention is not exclusive to counterterrorism. Although it is true that it is used more often when terrorist offences are concerned, it is also clearly effective in combating the most severe forms of organised crime.

As regards ETA terrorism, incommunicado detention was a highly effective instrument, because it tends to minimise the efforts of the terrorist organisation and its support framework from immediately disseminating information about arrests and their scope, which would enable them to hide evidence and goods and assist the flight of other possible terrorists.

In the same sense, incommunicado detention is effective in cases of other kinds of terrorism, such as that of GRAPO, and neo-Salafist jihadist terrorism, as well as in combating severe organised crime, especially that involving mafias and criminal organisations with high infiltration in government structures.

Furthermore, all court decisions have agreed on the nonexistence in international law of any regulation forbidding incommunicado detention. What Treaties and Conventions do prohibit is torture. Therefore, to relate incommunicado detention with torture—or to state that, once incommunicado detention has been ordered, that extreme control measures must be taken to avoid any possibility of mistreatment or inhuman or degrading Treatment—seems entirely unjustified prejudice which has nothing to do with legal technique or police effectiveness.

In this regard, suffice to say that the European Court of Human Rights has ruled on isolation or isolated detention in several cases, affirming that strict detention conditions, including isolation, are not enough to constitute torture. Furthermore, the Spanish Constitutional Court points out that what incommunicado detention seeks to achieve is not to harm detainees, but rather to prevent them from incurring in "the danger that knowledge of the state of an investigation by persons not involved in the aforesaid could lead to the avoidance of the action of justice by those who are guilty of or implicated in the offence under investigation, or that they destroy or hide evidence of its commision."[1]

In parallel, and as is the case with other legislative measures, the incommunicado detention system is one of the procedural tools most heavily attacked by the organisations forming part of ETA's support structure, and by the terrorist organisation itself, which, precisely, reveals the effectiveness of this tool and the need for it to continue to be available for the sake of better combating terrorism.

Recent events in Spain have made manifest the need to maintain this system of incommunicado detention, especially in ETA counterterrorism, and more specifically, in safeguarding legal assistance from an ex officio appointed lawyer. In recent years, the Spanish authorities judicial authorities have accused several lawyers of collaborating with or being members of ETA—lawyers who, precisely, took advantage of their status to obtain information for ETA and to convey messages between the leaders of the terrorist group, its commandos, and imprisoned terrorists. The mission of these lawyers is, in addition to providing legal counsel, to operate in consonance with ETA's goals and interests. In the past, it was found that some of these lawyers had attempted to manipulate the rotating duty roster after a terrorist had been detained, in order to try to make their own duty days coincide with providing assistance to a detained ETA member. Likewise, it is also known that these terrorist defenders have tried to infiltrate different provincial Bar Associations.

[1] Judgment of the Constitutional Court 127/2000, of 16 May 2000, Third legal rationale; Judgment of the Constitutional Court 196/1987, of 11 December 1987, Seventh legal rationale; and Ruling of the Constitutional Court 155/1999, of 14 June 1999, Fourth legal rationale.

Furthermore, experience makes manifest the extreme preventive measures that the vast majority of public defenders carry out when faced with serving as an *ex officio* appointed lawyer for terrorism detainees. This generalised situation of fear could be taken advantage of by the terrorists themselves to try to break the effectiveness of incommunicado detention, forcing the avoidance of being represented by an ex officio appointed lawyer in order to be represented by someone close to the terrorist organisation.

To all of these, it must be added that section c of Art. 527 of the Criminal Procedure Act establishes that "during the time that incommunicado detention lasts, the detainee shall not have the right to a private interview with the lawyer at the end of a given questioning session in which the lawyers may have been involved."

According to the Report by the Commissioner for Human Rights of the Council of Europe, it was after 2007 that detainees had the right to an ex officio appointed lawyer (paragraph 102). However, the Spanish Constitution of 1978, in Art. 17.3, ensures that "the arrested person shall be guaranteed the assistance of a lawyer during the police enquiries or judicial investigation, under the terms to be laid down by the law." Furthermore, Organic Law 14/1983, of 12 December, which develops Art. 17.3 of the Spanish Constitution regarding legal assistance for detainees and prisoners, and the amendment of Arts. 520 and 527 of the Criminal Procedure Act, establishes the following in Art. 1: "Right to assign a lawyer and to request his or her presence during police or judicial questioning, and to intervene in any identification line-up to which the detainee or prisoner might be subject. Should they not designate a lawyer, then an ex officio lawyer shall be appointed."

Regarding incommunicado detention of minors, it is important to mention that the Incommunicado detention of a minor is legal in Spain, with a more favourable treatment regarding rights; however, in practice application of such a measure is rare and absolutely exceptional.

Furthermore, in these cases Spain's laws on minors stipulate specific rights applicable to minors subject to incommunicado detention, involving even more scrupulous respect for the procedural safeguards compared with an adult.

The Report by the Commissioner for Human Rights of the Council of Europe mentions several times the lack of effectiveness of investigations or mistreatment. Accusations of mistreatment or torture are presented before the competent judicial bodies, with the corresponding judicial authority carrying out the investigation. As is the norm wherever there is rule of law, the police officers accused are subject to the decisions of these legal authorities.

1.2 Right of persons held in incommunicado detention to be examined by a medical doctor of their choice. (Section 102)

The actions of the State Security Forces in cases of detention of persons, regardless of the offences committed, are always conducted pursuant to current legislation and to the orders and instructions originating from the competent judicial Authority.

Detainees may be examined by medical doctors of their choice, should they so request, together with the forensic doctor affiliated with the Investigating Court on duty, who will visit the detainees when the Judge of said Court so orders.

The designation of a second medical doctor, other than the forensic doctor, to examine a detainee, is the responsibility of the judicial Authority. In cases of persons held in incommunicado detention, the designation of a medical doctor other than the forensic doctor may contribute to diminishing, or even defeating, the purpose of incommunicado detention, given the possibility of sharing sensitive information that may jeopardise the success of the investigation.

1.3 Right of persons held in incommunicado detention to notify a family member or another person designated by them of their detention and of their location. (Section 102)

Section B of Article 527 of the Criminal Procedure Act sets forth that while persons are in incommunicado detention, they shall not have the right to notify a family member or other person of their choice of the fact that they have been detained and the location where they are being held in custody.

1.4 Audio and video recording of the entirety of incommunicado detention. (Sections 102, 134 and 146)

Periodically, different Central Investigating Courts of the National High Court have been requiring that investigators drawing up reports of detentions of ETA members make video recordings of persons held in incommunicado detention.

In this regard, all these judicial requirements have been duly met, and the corresponding technical measures have been establish to carry out the recordings specified in the judicial rulings; these recordings shall be handed over to the requiring Central Investigating Court

The Court is always informed of any incident that may occur during the detention of accused persons, in particular of the situation thereof every 12 hours, and whenever necessary. All of this without prejudice to the fact that the Judge may appear at any time at the place of detention in order to learn of said situation. In the periodical reports sent to the Judge, the Courts is informed of the characteristics of the place of detention, of how long detainees remain therein, and of the situation of incommunicado detention

1.5 Detainees are mostly unable to identify the alleged authors of abuse as they are routinely blindfolded during interrogations. (Section 102)

The report reflects criticism made by the Committee for the Prevention of Torture, which affirms that "detainees are mostly unable to identify the alleged authors of abuse as they are routinely blindfolded during interrogations".

This affirmation is not correct, because the procedure of taking the statement of detainees is conducted in the presence of an ex officio appointed lawyer, without the use of blindfolding or any other system preventing detainees from seeing those participating in the procedure, both the lawyer and the investigators.

1.6 Lack of diligent and independent forensic examination of incommunicado detainees. (Section 105)

Forensic doctors who conduct medical examinations of detainees are affiliated with the Justice administration. Forensic medical examinations are conducted in total privacy, in a room where only the forensic doctor and the detainee are present. Persons held in incommunicado detention are visited by forensic doctors on the occasions determined by the competent judicial Authority.

2. Migrants and foreigners

2.1. Alleged ill-treatment of migrants (Sections 108 and 109) General considerations.

One of the most important elements in the protection of human rights, and which underpins the actions of the Ministry of the Interior and the State Security Forces, is that of equality and non-discrimination of persons for any reason whatsoever. In the Spanish Constitution, the principle of equality is a higher value in the legal system, pursuant to United Nations Declarations and Conventions and other international instruments.

The report states that "the Commissioner is concerned about increasingly frequent reports of ill-treatment or discriminatory treatment of migrants by law enforcement officials".

Law enforcement officials use the measures stipulated in order to restore public safety and protect the integrity of persons and goods against violent actions. This mandate is fully incorporated into the public safety system of every democratic State.

The Spanish legal system requires that law enforcement officials act with the necessary decisiveness in order to prevent serious harm; in doing so, they are governed by the principles of congruence, timeliness and proportionality in the use of measures.

Moreover, it must be pointed out that many law enforcement actions that have required the use of force responded to self-defence of the physical integrity of the acting law enforcement officials, who were being attacked with blunt instruments, metal objects or even rocks. This situation was conveyed to the Commissioner for Human Rights, Mr Muižnieks, who was even shown some of these objects, collected at the scene where these acts had been committed.

Detention Centres for Foreigners (CIEs) and Airports.

CIEs, set forth in Organic Law 4/2000, of 11 January, on the Rights and Freedoms of Foreigners in Spain (amended on several occasions), are public institutions of a non-penitentiary nature, under the aegis of the Ministry of the Interior, aimed at keeping in custody those foreigners involved in procedures for their expulsion from, return from or refusal of entry into Spanish territory for the reasons stipulated by law, and who are to appear before a judicial authority. Their internal regulations are set forth in an Order of the Ministry of the Presidency of 1999; however, Specific Rules of Procedure are being drafted for CIEs, which will be called "Monitored Stay Centres for Foreigners".

The mentioned Law sets forth a series of guarantees for foreigners in CIEs, noteworthy among which is that the period of detention cannot exceed 60 days and a new detention cannot be initiated for any of the reasons set forth in the same investigation.

Furthermore, the Law sets forth the rights of foreigners in CIEs: among others, to informed of their situation; the safeguarding of their life, physical integrity and health; and to be able to exercise the rights recognised in the legal system, without any limitations other than those deriving from their situation of confinement.

Among these rights is also that of communicating with family members, consular officers of their countries, or other persons (which may only be restricted by a judicial ruling), as well as that of getting in touch with NGOs and national, international or non-governmental organisations for the protection of migrants. The Law also stipulates that organisations legally constituted in Spain for the defence of migrants' rights and international organizations may visit these Centres.

All the above bears witness to the greatest transparency in the Centres' operation. Their fundamental objective is respect for the rights and guarantees of the foreigners who are therein.

As regards the allegations of ill-treatment reported in the 2011 Report of the Committee for the Prevention of Torture (CPT), please refer to the Spanish Government's response to said allegations in its response to the mentioned Report. However, it is worth making some considerations that are generally relevant to this type of accusations:

> At any time, persons confined in these centres may—and do—file complaints of alleged ill-treatment. In most cases, these complaints are dismissed, after verification that there has been no such conduct. In this regard, it must also be noted that this type of complaints often responds to instructions to discredit the State Security Forces, and

as a defence mechanism against the judicial and/or governmental authority as the case may be.

- All the CIEs are subject to control by the judicial authority, which receives all the procedures conducted in relation to complaints of ill-treatment. In this sense, it must be noted that Article 62.6 of Organic Law 4/2000 sets forth that the judicial authority that is competent to authorise and revoke confinement *"shall rule on, without possibility of further appeal, the requests and complaints made by persons in confinement insofar as their fundamental rights are affected. The judicial authority may also visit such centres after being informed of a serious violation, or when it is considered appropriate"*.

- The Ombudsperson's Office visits the different Detention Centres, and subsequently provides reports with different recommendations.

- When there is evidence of criminal offence in law enforcement actions, the competent Court is immediately informed, and the Disciplinary Regime Unit of the Directorate-General for the Police and the Inspectorate for Security Personnel and Services of the State Secretariat for Security initiate the relevant investigations.

  Members of the National Police Force receive ongoing and permanent training that includes the express prohibition of conduct constituting ill-treatment.

As regards expulsion procedures at airports, and without going into the specific accusation reported in the 2011 CPT Report (please refer to the Spanish Government's response to said Report, in which it duly responded to said accusation), it must be noted that expulsion procedures are exhaustively regulated in Organic Law 4/2000 and its Regulations, where the necessary guarantees for migrants are stipulated.

The Fatou Sonko Case

With regard to the Report to which the Commissioner refers, of reference number CAT/C/47/D/368/2008 (Fatou Sonko), the Committee Against Torture performed its own examination and was unable to identify a direct connection between the immigrant's death and the crew's decision.

In this Report, which is based on the versions of the parties, the Committee declares itself incompetent to weigh up the evidence presented by the party represented by the State. Therefore, it is impossible for the Committee to assess the evidence provided by Spain, which guarantees that the Guardia Civil's action always complied with the rules and protocols relating to immigration and maritime rescue. Equally, it should be noted that given their geographical location and their logical lack of awareness about the health of the immigrants (who were adversely affected by a difficult crossing), the crew acted with the diligence required in such a situation, disembarking them a short distance from the beach so that they could reach dry land without difficulty.

It may be concluded therefore that Mr Sonko's death should under no circumstances be attributed to the actions of the members of the Guardia Civil comprising the crew. Moreover, it should be underlined that the task they performed was a humanitarian service.

2.2. *Discriminatory practice (sections 110 y 111)*

The basic principles for action contained in *Ley Orgánica* 2/1986, of 13 March, on Law Enforcement Agencies, includes that of acting *"with absolute political neutrality and impartiality and, in consequence, without any discrimination for reasons of race, religion or views".* Furthermore, *Ley Orgánica* 4/2010, of 20 May, on the disciplinary regime of the National Police Force, classifies as a very serious offence, and therefore one whose punishment includes dismissal from the service, *"any action which represents discrimination for reasons of racial or*

ethnic origin, religion or beliefs, disability, age or sexual orientation, sex, language, opinion, place of birth or residence, or any other personal or social condition or circumstance.

Moreover, with regard to registration systems, it is important to note the existence of a police statistical database, at national level, which contains the total number of identifications to have been made. This is without prejudice to compliance with the obligation provided for in Article 20.2 of *Ley Orgánica* 1/1992, of 21 February, on Protection of Citizens' Security which establishes the obligation to keep in police stations a *"Record Book containing the records of identification made there, together with the reasons for them and their duration, and which will be permanently at the disposal of the competent judicial authority and of the Public Prosecutor's Office. Notwithstanding the above, the Ministry of the Interior will periodically send a summary of the identification records to the Public Prosecutor's Office".*

Finally, with regard to Police training, it should be noted that the officials of the National Police Force, as well as the prior legal knowledge that they must display in state examinations to enter the Force, are required to undertake ongoing and permanent training.

3. Human rights protection in the context of policing public demonstrations. Excessive use of force by the police in public demonstrations in 2011 and 2012. (Sections 112 et seq.)

In this point, the Report refers to "reported instances of disproportionate use of force, including rubber bullets". *Ley Orgánica* 2/1986, of 13 March, on Law Enforcement Agencies, contains in Article 5.2 how relations with citizens should be conducted, specifically:

a) Prevention, in the exercise of their professional duties, of any abusive, arbitrary or discriminatory practice that involves physical or moral violence.

b) The use at all times of courteous and professional treatment in their relations with citizens, whom they will attempt to help and protect, whenever circumstances advise this or require them to do so. In all their actions, they should provide full information, as extensively as possible, on their causes and purpose.

c) In the exercise of their duties, they must act with necessary and prompt decisiveness when to do so avoids serious, immediate or irreparable harm, with their actions being governed by the principles of consistency, opportunity and proportionality in the use of the measures at their disposal.

d) They should only use weapons in situations in which there is a reasonably serious risk to their life, their physical well-being or that of third parties, or in those circumstances that may represent a serious risk to citizen security, and in accordance with the principles referred to in the previous section.

Furthermore, the principles for action of specialised crowd-control units are as follows:

- Force will only be employed when other procedures are insufficient for restoring order,
- Action will always be proportional to the disorder and hostile acts committed by demonstrators,
- The use of force must always be based on the strict respect for laws and regulations.
- Those responsible for its use will always be in control of their subordinates and will prevent them from carrying out acts which may worsen the situation.

Specialised crowd-control units are committed to preventing, maintaining, and when appropriate, restoring citizen security.

These units do not use rubber-coated bullets, but rubber ones. The use of rubber bullets is severely restricted, as laid down by the service manual, with the following requirements applicable:

- Express authorisation from the governing authority.
- They are to be used as a last resort, exclusively against violent crowds in situations where there is a serious risk for the life of police officers in attendance, their physical well-being or that of third parties and when this represents a serious risk to citizen security.

4. Human rights protection in the context of policing public demonstrations. Lack of identification of law enforcement officials. (Sections 112 et seq.)

As Mr. Muiznieks states in his Report, the National Police Force, following a decision by the Directorate-General of Police of 19 April 2013, created a new form of identification for police support unit officers. The intention is for all officers to carry an ID so they may be identified clearly if necessary.

Similarly, the Guardia Civil's citizen security uniform, which has been modified recently, incorporates the corresponding identification plate showing each officer's Professional Identity Card number in a visible, prominent position.

The Guardia Civil views as clear and permanent the aim to improve as much as possible the identification of its members in their actions and relations with citizens. This is underlined by the fact that the design of this citizen security uniform incorporates the professional identification number in a prominent position on its principal garments, with a notable improvement in the size and clarity of the characters used in comparison with the previous system.

In the specific area of crowd-control units, when the officers in these anti-riot units receive the instruction to intervene, this is mostly to resolve violent and turbulent situations requiring swift, resolute and forceful action in which the citizens targeted often display an active and sometimes violent attitude.

However, this task, while difficult, should in no way disturb citizens' free exercise of the rights to assemble or demonstrate.

Accordingly, in an attempt to make both situations compatible, it was decided to locate the identification number in the most visible part of the officer in attendance, the bullet-proof vest. This is always due to the need to improve the service the citizen receives and therefore since 27.09.13, all the members of the anti-riot units have worn this number when they intervene.

With regard to specialised crowd-control units, the process is under way for their officers to wear an identification number during demonstrations. This measures 21x6 cm. and is in a reflective white colour on a black background, with each number being 1 cm wide and 4 cm in height. This number would be placed on the back of the bullet-proof vest. This positioning was selected for being the only place where it is always visible in all the situations studied.

The option of positioning the number on the helmet, as proposed by the Commissioner for Human Rights in his Report, met with consideration although the helmet size means it would not be fully visible.

5. The need to combat impunity of the members of law enforcement authorities. Imposition of effective sanctions on perpetrators of serious human rights violations. (Sections 131 et seq.)

The disciplinary regime to which members of the law enforcement agencies are subject constitutes a system for safeguarding and guaranteeing proper compliance with the tasks entrusted to them and, in the case of infringement, its swift, effective procedures restore the order adversely affected by the infringement as quickly as possible.

The Report of the Commissioner for Human Rights of the Council of Europe considers that Spanish judges display a general trend of “imposition of non-dissuasive penalties” in cases of ill-treatment, citing as an example that “in November 2011, the Spanish Supreme Court overturned the conviction of four members of the Guardia Civil by a court in the Basque Country for torture committed against two alleged members of ETA.”

It appears that reference is being made to the case of the ETA members, Igor PORTO (NENA) and Martin Sarasola OYARBIDE, who were arrested by the Guardia Civil in Mondragón, Guipúzcoa) on 6 January 2008, as members of the ELURRA commando group pertaining to the ETA terrorist organisation. In December 2010, the First Section of the Provincial Court of Guipúzcoa sentenced four officers of the Guardia Civil who took part in the arrest to various terms of imprisonment for the crimes of serious torture and injury.

In Ruling No. 1136/2011, of 2 November, the Judicial Chamber for Criminal Cases of the Supreme Court resolved the appeal presented by the Public Prosecutor’s Office, the private prosecution and the defence lawyers for the Guardia Civil officers and absolved them of the crimes for which they were convicted by the Provincial Court of Guipúzcoa.

The Supreme Court ruled that the right to the officers’ presumption of innocence had not been undermined as the committing of the crimes of torture and injury was not duly accredited. It stated that the Provincial Court of Guipúzcoa should have held reservations when assessing the sincerity of the testimony of the two terrorists who had already been convicted to over 1,000 years of prison, and a conviction for torture could lead the sentence to be reviewed. Moreover, it reproached the Provincial Court of Guipúzcoa for ignoring the total coincidence of the testimonies of the Civil Guards in comparison to the “variability of the statements” by the detainees. The Provincial Court "should have questioned the assertions made by the detainees, without discarding the possibility of a false alibi, given that the existing evidence carried great dissuasive power”.

The Supreme Court ruled “absolutely inadmissible" the testimony of the three witnesses who appeared at the request of the defence of the ETA members in the oral hearing held at the Provincial Court of Guipúzcoa. Two of these witnesses had connections with the terrorist organisation.

For all these reasons, the Supreme Court concluded that the evidence provided by the Provincial Court arrived at conclusions which were "of uncertain value or very open" and which "would introduce convincing weakness into the supposed evidence which was incapable of undermining the presumption of innocence". To all this, the Supreme Court continued, it was necessary to add the testimony of the complainant ETA members which was "variable, shifting and highly conditioned by the ETA manual, given the drastic discipline which membership of the terrorist organisation imposes" and the obligation that is imposed on them to make systematic denunciations of supposed torture.

It is surprising that the Report of the Commissioner for Human Rights of the Council of Europe lends importance to the verdict of the Provincial Court of Guipúzcoa, which convicted the Guardia Civil officers, but chooses not to mention the ruling of the Supreme Court, a higher judicial body in every respect (except for provisions in the area of constitutional guarantees), which overturned the conviction with the aforementioned arguments.

It is necessary to note that the systematic denunciation of ill-treatment by those in incommunicado detention due to their alleged membership of a terrorist organisation, especially

ETA, has been and continues to be a tactic employed by the members of such organisations, a denunciation which in most cases has been shown to be false and baseless.

Finally, it should be stated that those arrested for belonging to a terrorist organisation and above all ETA members, who are kept in incommunicado detention, make systematic denunciations of ill-treatment against the police officers involved. This is a tactic used by the members of these organisations, which instruct them to do so, and particularly by ETA, to this effect.

6. Recommendations. (Section 150)

This Section states that "administrative sanctions should not be imposed on participants in peaceful demonstrations, including those that have not been notified to the authorities". However, the Spanish legislation which regulates the right of assembly, *Ley Orgánica* 9/1983, is very clear on this matter, indicating that no sanction is imposed for participation in a non-notified peaceful demonstration. Rather, what is sanctioned is the use of a public thoroughfare by those who comprise such a demonstration. Notification is made so that the competent authority, through its law enforcement agencies, may guarantee the right to demonstrate without undermining the right of other citizens to circulate freely. Without this notification, citizen security could be adversely affected, seriously risking people's lives and well-being.

Finally, it should be noted that although the number of demonstrations has increased by over 50%, the cases where altercations have occurred, resulting in injuries, are very scarce. The rubber bullets used by specialised crowd-control units are a measure which is defined as being of exceptional use and always requiring of governmental authorisation. However, law enforcement agencies are continually in contact with police forces of other countries, exchanging practices and information about measures employed, with no resource causing less injury than the rubber bullet having been identified. Finally, it should be remembered that this measure is employed as a last resort and that its use is tightly controlled.

7. Sanctioning officers and independent mechanism. (Sections 147 and 153)

With regard to the declaration that "racially-motivated police misconduct should be adequately punished by the authorities", it should be noted that sufficient legal and structural instruments and mechanisms are in place to this respect.

Any conduct considered worthy of reproach committed by the members of the Law Enforcement Agencies will be subject to the relevant disciplinary process.

Moreover, control exists of other units within the Department's organic structure, such as the Internal Affairs Unit and the Inspectorate for Staff and Security Services, the latter responsible to the State Secretariat for Security and therefore removed from the police structure. The institutional control of the Ombudsman must also be taken into account.

Finally, it must be remembered that public officials are subject to criminal law, under whose scope, either ex officio or through denunciation, they may be investigated. In these cases, the Judicial Authority will be responsible for deciding whether a crime has been committed.

8. Discriminatory identity controls by police. (Heading 111)

With regard to the recommendation contained in the report about "putting in place a system of recording identity controls with a view to obtaining data on potential discrimination", it is important to note the existence of a police statistical database at national level which contains the total number of identifications to have been made, without prejudice to compliance with the provisions of Article 20.3 of *Ley Orgánica* 1/1992, of 21 February, on the Protection of Citizens' Security.

It should be noted that one of the most significant recent actions was to set up effective measures to eliminate the practice of identity controls based on ethnic and racial profiles that in practice could be translated into the indiscriminate detention of aliens. The Directorate-General of Police published last year Circular 2/2012 on citizen identification, which prohibits **indiscriminate raids and ethnic profiling. In this way, there has been a response to the demand from social groups, NGOs and human rights committees of international bodies to make respect for the rights of immigrants more effective.**

Conclusion.

The Ministry of the Interior actively participates in the promotion and defence of human rights by complying with the commitments adopted by Spain through the signing of the various Agreements on human rights protection. It guarantees the principle of equality, gender equality, the elimination of violence against women, the protection of children's rights and the fight against terrorism, which takes the specific form of respect for human rights and in the comprehensive protection of victims. Moreover, it acts against any type of treatment that infringes human dignity and specifically against the trafficking of human beings.

Spain holds a position with regard to criminal and administrative law that enables it to combat effectively and forcefully any type of violation of human rights in accordance with the commitments adopted in the various Conventions and Agreements on human rights of which it is a party.